

110TH CONGRESS  
1ST SESSION

# H. R. 1427

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## AN ACT

To reform the regulation of certain housing-related  
Government-sponsored enterprises, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2   *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Federal Housing Finance Reform Act of 2007”.

4 (b) TABLE OF CONTENTS.—The table of contents for  
5 this Act is as follows:

Sec. 1. Short title and table of contents.

Sec. 2. Definitions.

**TITLE I—REFORM OF REGULATION OF ENTERPRISES AND  
FEDERAL HOME LOAN BANKS**

**Subtitle A—Improvement of Safety and Soundness**

Sec. 101. Establishment of the Federal Housing Finance Agency.

Sec. 102. Duties and authorities of Director.

Sec. 103. Federal Housing Enterprise Board.

Sec. 104. Authority to require reports by regulated entities.

Sec. 105. Disclosure of income and charitable contributions by enterprises.

Sec. 106. Assessments.

Sec. 107. Examiners and accountants.

Sec. 108. Prohibition and withholding of executive compensation.

Sec. 109. Reviews of regulated entities.

Sec. 110. Inclusion of minorities and women; diversity in Agency workforce.

Sec. 111. Regulations and orders.

Sec. 112. Non-waiver of privileges.

Sec. 113. Risk-Based capital requirements.

Sec. 114. Minimum and critical capital levels.

Sec. 115. Review of and authority over enterprise assets and liabilities.

Sec. 116. Corporate governance of enterprises.

Sec. 117. Required registration under Securities Exchange Act of 1934.

Sec. 118. Liaison with Financial Institutions Examination Council.

Sec. 119. Guarantee fee study.

Sec. 120. Conforming amendments.

**Subtitle B—Improvement of Mission Supervision**

Sec. 131. Transfer of product approval and housing goal oversight.

Sec. 132. Review of enterprise products.

Sec. 133. Conforming loan limits.

Sec. 134. Annual housing report regarding regulated entities.

Sec. 135. Annual reports by regulated entities on affordable housing stock.

Sec. 136. Mortgagor identification requirements for mortgages of regulated en-  
tities.

Sec. 137. Revision of housing goals.

Sec. 138. Duty to serve underserved markets.

Sec. 139. Monitoring and enforcing compliance with housing goals.

Sec. 140. Affordable Housing Fund.

Sec. 141. Consistency with mission.

Sec. 142. Enforcement.

Sec. 143. Conforming amendments.

### Subtitle C—Prompt Corrective Action

- Sec. 151. Capital classifications.
- Sec. 152. Supervisory actions applicable to undercapitalized regulated entities.
- Sec. 153. Supervisory actions applicable to significantly undercapitalized regulated entities.
- Sec. 154. Authority over critically undercapitalized regulated entities.
- Sec. 155. Conforming amendments.

### Subtitle D—Enforcement Actions

- Sec. 161. Cease-and-desist proceedings.
- Sec. 162. Temporary cease-and-desist proceedings.
- Sec. 163. Prejudgment attachment.
- Sec. 164. Enforcement and jurisdiction.
- Sec. 165. Civil money penalties.
- Sec. 166. Removal and prohibition authority.
- Sec. 167. Criminal penalty.
- Sec. 168. Subpoena authority.
- Sec. 169. Conforming amendments.

### Subtitle E—General Provisions

- Sec. 181. Boards of enterprises.
- Sec. 182. Report on portfolio operations, safety and soundness, and mission of enterprises.
- Sec. 183. Conforming and technical amendments.
- Sec. 184. Study of alternative secondary market systems.
- Sec. 185. Effective date.

## TITLE II—FEDERAL HOME LOAN BANKS

- Sec. 201. Definitions.
- Sec. 202. Directors.
- Sec. 203. Federal Housing Finance Agency oversight of Federal Home Loan Banks.
- Sec. 204. Joint activities of Banks.
- Sec. 205. Sharing of information between Federal Home Loan Banks.
- Sec. 206. Reorganization of Banks and voluntary merger.
- Sec. 207. Securities and Exchange Commission disclosure.
- Sec. 208. Community financial institution members.
- Sec. 209. Technical and conforming amendments.
- Sec. 210. Study of affordable housing program use for long-term care facilities.
- Sec. 211. Effective date.

## TITLE III—TRANSFER OF FUNCTIONS, PERSONNEL, AND PROPERTY OF OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT, FEDERAL HOUSING FINANCE BOARD, AND DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Subtitle A—Office of Federal Housing Enterprise Oversight

- Sec. 301. Abolishment of OFHEO.
- Sec. 302. Continuation and coordination of certain regulations.
- Sec. 303. Transfer and rights of employees of OFHEO.
- Sec. 304. Transfer of property and facilities.

### Subtitle B—Federal Housing Finance Board

- Sec. 321. Abolishment of the Federal Housing Finance Board.  
 Sec. 322. Continuation and coordination of certain regulations.  
 Sec. 323. Transfer and rights of employees of the Federal Housing Finance Board.  
 Sec. 324. Transfer of property and facilities.

Subtitle C—Department of Housing and Urban Development

- Sec. 341. Termination of enterprise-related functions.  
 Sec. 342. Continuation and coordination of certain regulations.  
 Sec. 343. Transfer and rights of employees of Department of Housing and Urban Development.  
 Sec. 344. Transfer of appropriations, property, and facilities.

**1 SEC. 2. DEFINITIONS.**

2 Section 1303 of the Housing and Community Devel-  
 3 opment Act of 1992 (12 U.S.C. 4502) is amended—

4 (1) in paragraph (7), by striking “an enter-  
 5 prise” and inserting “a regulated entity”;

6 (2) by striking “the enterprise” each place such  
 7 term appears (except in paragraphs (4) and (18))  
 8 and inserting “the regulated entity”;

9 (3) in paragraph (5), by striking “Office of  
 10 Federal Housing Enterprise Oversight of the De-  
 11 partment of Housing and Urban Development” and  
 12 inserting “Federal Housing Finance Agency”;

13 (4) in each of paragraphs (8), (9), (10), and  
 14 (19), by striking “Secretary” each place that term  
 15 appears and inserting “Director”;

16 (5) in paragraph (13), by inserting “, with re-  
 17 spect to an enterprise,” after “means”;

18 (6) by redesignating paragraphs (16) through  
 19 (19) as paragraphs (20) through (23), respectively;

(7) by striking paragraphs (14) and (15) and inserting the following new paragraphs:

“(18) REGULATED ENTITY.—The term ‘regulated entity’ means—

“(A) the Federal National Mortgage Association and any affiliate thereof;

“(B) the Federal Home Loan Mortgage Corporation and any affiliate thereof; and

“(C) each Federal home loan bank.

“(19) REGULATED ENTITY-AFFILIATED PARTY.—The term ‘regulated entity-affiliated party’ means—

“(A) any director, officer, employee, or agent for, a regulated entity, or controlling shareholder of an enterprise;

“(B) any shareholder, affiliate, consultant, or joint venture partner of a regulated entity, and any other person, as determined by the Director (by regulation or on a case-by-case basis) that participates in the conduct of the affairs of a regulated entity, except that a shareholder of a regulated entity shall not be considered to have participated in the affairs of that regulated entity solely by reason of being a member or customer of the regulated entity;

“(C) any independent contractor for a regulated entity (including any attorney, appraiser, or accountant), if—

“(i) the independent contractor knowingly or recklessly participates in—

“(I) any violation of any law or regulation;

“(II) any breach of fiduciary duty; or

“(III) any unsafe or unsound practice; and

“(ii) such violation, breach, or practice caused, or is likely to cause, more than a minimal financial loss to, or a significant adverse effect on, the regulated entity; and

“(D) any not-for-profit corporation that receives its principal funding, on an ongoing basis, from any regulated entity.”.

(8) by redesignating paragraphs (8) through (13) as paragraphs (12) through (17), respectively; and

(9) by inserting after paragraph (7) the following new paragraph:

“(11) FEDERAL HOME LOAN BANK.—The term ‘Federal home loan bank’ means a bank established

1 under the authority of the Federal Home Loan  
2 Bank Act.”;

3 (10) by redesignating paragraphs (2) through  
4 (7) as paragraphs (5) through (10), respectively;  
5 and

6 (11) by inserting after paragraph (1) the fol-  
7 lowing new paragraphs:

8 “(2) AGENCY.—The term ‘Agency’ means the  
9 Federal Housing Finance Agency.

10 “(3) AUTHORIZING STATUTES.—The term ‘au-  
11 thorizing statutes’ means—

12 “(A) the Federal National Mortgage Asso-  
13 ciation Charter Act;

14 “(B) the Federal Home Loan Mortgage  
15 Corporation Act; and

16 “(C) the Federal Home Loan Bank Act.

17 “(4) BOARD.—The term ‘Board’ means the  
18 Federal Housing Enterprise Board established under  
19 section 1313B.”.

1 **TITLE I—REFORM OF REGULA-**  
 2 **TION OF ENTERPRISES AND**  
 3 **FEDERAL HOME LOAN BANKS**  
 4 **Subtitle A—Improvement of Safety**  
 5 **and Soundness**

6 **SEC. 101. ESTABLISHMENT OF THE FEDERAL HOUSING FI-**  
 7 **NANCE AGENCY.**

8 (a) IN GENERAL.—The Housing and Community De-  
 9 velopment Act of 1992 (12 U.S.C. 4501 et seq.) is amend-  
 10 ed by striking sections 1311 and 1312 and inserting the  
 11 following:

12 **“SEC. 1311. ESTABLISHMENT OF THE FEDERAL HOUSING**  
 13 **FINANCE AGENCY.**

14 “(a) ESTABLISHMENT.—There is established the  
 15 Federal Housing Finance Agency, which shall be an inde-  
 16 pendent agency of the Federal Government.

17 “(b) GENERAL SUPERVISORY AND REGULATORY AU-  
 18 THORITY.—

19 “(1) IN GENERAL.—Each regulated entity shall,  
 20 to the extent provided in this title, be subject to the  
 21 supervision and regulation of the Agency.

22 “(2) AUTHORITY OVER FANNIE MAE, FREDDIE  
 23 MAC, AND FEDERAL HOME LOAN BANKS.—The Di-  
 24 rector of the Federal Housing Finance Agency shall  
 25 have general supervisory and regulatory authority



1 over each regulated entity and shall exercise such  
2 general regulatory and supervisory authority, includ-  
3 ing such duties and authorities set forth under sec-  
4 tion 1313 of this Act, to ensure that the purposes  
5 of this Act, the authorizing statutes, and any other  
6 applicable law are carried out. The Director shall  
7 have the same supervisory and regulatory authority  
8 over any joint office of the Federal home loan banks,  
9 including the Office of Finance of the Federal Home  
10 Loan Banks, as the Director has over the individual  
11 Federal home loan banks.

12 “(c) SAVINGS PROVISION.—The authority of the Di-  
13 rector to take actions under subtitles B and C shall not  
14 in any way limit the general supervisory and regulatory  
15 authority granted to the Director.

16 **“SEC. 1312. DIRECTOR.**

17 “(a) ESTABLISHMENT OF POSITION.—There is estab-  
18 lished the position of the Director of the Federal Housing  
19 Finance Agency, who shall be the head of the Agency.

20 “(b) APPOINTMENT; TERM.—

21 “(1) APPOINTMENT.—The Director shall be ap-  
22 pointed by the President, by and with the advice and  
23 consent of the Senate, from among individuals who  
24 are citizens of the United States, have a dem-  
25 onstrated understanding of financial management or

1 oversight, and have a demonstrated understanding  
2 of capital markets, including the mortgage securities  
3 markets and housing finance.

4 “(2) TERM AND REMOVAL.—The Director shall  
5 be appointed for a term of 5 years and may be re-  
6 moved by the President only for cause.

7 “(3) VACANCY.—A vacancy in the position of  
8 Director that occurs before the expiration of the  
9 term for which a Director was appointed shall be  
10 filled in the manner established under paragraph  
11 (1), and the Director appointed to fill such vacancy  
12 shall be appointed only for the remainder of such  
13 term.

14 “(4) SERVICE AFTER END OF TERM.—An indi-  
15 vidual may serve as the Director after the expiration  
16 of the term for which appointed until a successor  
17 has been appointed.

18 “(5) TRANSITIONAL PROVISION.—Notwith-  
19 standing paragraphs (1) and (2), the Director of the  
20 Office of Federal Housing Enterprise Oversight of  
21 the Department of Housing and Urban Development  
22 shall serve as the Director until a successor has been  
23 appointed under paragraph (1).

24 “(c) DEPUTY DIRECTOR OF THE DIVISION OF EN-  
25 TERPRISE REGULATION.—

1           “(1) IN GENERAL.—The Agency shall have a  
2       Deputy Director of the Division of Enterprise Regu-  
3       lation, who shall be appointed by the Director from  
4       among individuals who are citizens of the United  
5       States, and have a demonstrated understanding of  
6       financial management or oversight and of mortgage  
7       securities markets and housing finance.

8           “(2) FUNCTIONS.—The Deputy Director of the  
9       Division of Enterprise Regulation shall have such  
10      functions, powers, and duties with respect to the  
11      oversight of the enterprises as the Director shall pre-  
12      scribe.

13      “(d) DEPUTY DIRECTOR OF THE DIVISION OF FED-  
14      ERAL HOME LOAN BANK REGULATION.—

15           “(1) IN GENERAL.—The Agency shall have a  
16      Deputy Director of the Division of Federal Home  
17      Loan Bank Regulation, who shall be appointed by  
18      the Director from among individuals who are citi-  
19      zens of the United States, have a demonstrated un-  
20      derstanding of financial management or oversight  
21      and of the Federal Home Loan Bank System and  
22      housing finance.

23           “(2) FUNCTIONS.—The Deputy Director of the  
24      Division of Federal Home Loan Bank Regulation  
25      shall have such functions, powers, and duties with

1       respect to the oversight of the Federal home loan  
2       banks as the Director shall prescribe.

3       “(e) DEPUTY DIRECTOR FOR HOUSING.—

4               “(1) IN GENERAL.—The Agency shall have a  
5       Deputy Director for Housing, who shall be ap-  
6       pointed by the Director from among individuals who  
7       are citizens of the United States, and have a dem-  
8       onstrated understanding of the housing markets and  
9       housing finance and of community and economic de-  
10      velopment.

11             “(2) FUNCTIONS.—The Deputy Director for  
12      Housing shall have such functions, powers, and du-  
13      ties with respect to the oversight of the housing mis-  
14      sion and goals of the enterprises, and with respect  
15      to oversight of the housing finance and community  
16      and economic development mission of the Federal  
17      home loan banks, as the Director shall prescribe.

18      “(f) LIMITATIONS.—The Director and each of the  
19      Deputy Directors may not—

20             “(1) have any direct or indirect financial inter-  
21      est in any regulated entity or regulated entity-affili-  
22      ated party;

23             “(2) hold any office, position, or employment in  
24      any regulated entity or regulated entity-affiliated  
25      party; or

1           “(3) have served as an executive officer or di-  
2           rector of any regulated entity, or regulated entity-af-  
3           filiated party, at any time during the 3-year period  
4           ending on the date of appointment of such individual  
5           as Director or Deputy Director.

6           “(g) OMBUDSMAN.—The Director shall establish the  
7           position of the Ombudsman in the Agency. The Director  
8           shall provide that the Ombudsman will consider com-  
9           plaints and appeals from any regulated entity and any per-  
10          son that has a business relationship with a regulated enti-  
11          ty and shall specify the duties and authority of the Om-  
12          budsman.”.

13          (b) APPOINTMENT OF DIRECTOR.—Notwithstanding  
14          any other provision of law or of this Act, the President  
15          may, any time after the date of the enactment of this Act,  
16          appoint an individual to serve as the Director of the Fed-  
17          eral Housing Finance Agency, as such office is established  
18          by the amendment made by subsection (a). This sub-  
19          section shall take effect on the date of the enactment of  
20          this Act.

21       **SEC. 102. DUTIES AND AUTHORITIES OF DIRECTOR.**

22          (a) IN GENERAL.—The Housing and Community De-  
23          velopment Act of 1992 (12 U.S.C. 4513) is amended by  
24          striking section 1313 and inserting the following new sec-  
25          tions:

1 **“SEC. 1313. DUTIES AND AUTHORITIES OF DIRECTOR.**

2 “(a) DUTIES.—

3 “(1) PRINCIPAL DUTIES.—The principal duties  
4 of the Director shall be—

5 “(A) to oversee the operations of each reg-  
6 ulated entity and any joint office of the Federal  
7 Home Loan Banks; and

8 “(B) to ensure that—

9 “(i) each regulated entity operates in  
10 a safe and sound manner, including main-  
11 tenance of adequate capital and internal  
12 controls;

13 “(ii) the operations and activities of  
14 each regulated entity foster liquid, effi-  
15 cient, competitive, and resilient national  
16 housing finance markets that minimize the  
17 cost of housing finance (including activities  
18 relating to mortgages on housing for low-  
19 and moderate- income families involving a  
20 reasonable economic return that may be  
21 less than the return earned on other activi-  
22 ties);

23 “(iii) each regulated entity complies  
24 with this title and the rules, regulations,  
25 guidelines, and orders issued under this  
26 title and the authorizing statutes; and

1                   “(iv) each regulated entity carries out  
2                   its statutory mission only through activi-  
3                   ties that are consistent with this title and  
4                   the authorizing statutes.

5                   “(2) SCOPE OF AUTHORITY.—The authority of  
6                   the Director shall include the authority—

7                   “(A) to review and, if warranted based on  
8                   the principal duties described in paragraph (1),  
9                   reject any acquisition or transfer of a control-  
10                  ling interest in an enterprise; and

11                  “(B) to exercise such incidental powers as  
12                  may be necessary or appropriate to fulfill the  
13                  duties and responsibilities of the Director in the  
14                  supervision and regulation of each regulated en-  
15                  tity.

16                  “(b) DELEGATION OF AUTHORITY.—The Director  
17                  may delegate to officers or employees of the Agency, in-  
18                  cluding each of the Deputy Directors, any of the functions,  
19                  powers, or duties of the Director, as the Director considers  
20                  appropriate.

21                  “(c) LITIGATION AUTHORITY.—

22                  “(1) IN GENERAL.—In enforcing any provision  
23                  of this title, any regulation or order prescribed under  
24                  this title, or any other provision of law, rule, regula-  
25                  tion, or order, or in any other action, suit, or pro-

ceeding to which the Director is a party or in which the Director is interested, and in the administration of conservatorships and receiverships, the Director may act in the Director's own name and through the Director's own attorneys, or request that the Attorney General of the United States act on behalf of the Director.

“(2) CONSULTATION WITH ATTORNEY GENERAL.—The Director shall provide notice to, and consult with, the Attorney General of the United States before taking an action under paragraph (1) of this subsection or under section 1344(a), 1345(d), 1348(c), 1372(e), 1375(a), 1376(d), or 1379D(c), except that, if the Director determines that any delay caused by such prior notice and consultation may adversely affect the safety and soundness responsibilities of the Director under this title, the Director shall notify the Attorney General as soon as reasonably possible after taking such action.

“(3) SUBJECT TO SUIT.—Except as otherwise provided by law, the Director shall be subject to suit (other than suits on claims for money damages) by a regulated entity or director or officer thereof with respect to any matter under this title or any other applicable provision of law, rule, order, or regulation



1 under this title, in the United States district court  
2 for the judicial district in which the regulated entity  
3 has its principal place of business, or in the United  
4 States District Court for the District of Columbia,  
5 and the Director may be served with process in the  
6 manner prescribed by the Federal Rules of Civil  
7 Procedure.

8 **“SEC. 1313A. PRUDENTIAL MANAGEMENT AND OPERATIONS**  
9 **STANDARDS.**

10 “(a) STANDARDS.—The Director shall establish  
11 standards, by regulation, guideline, or order, for each reg-  
12 ulated entity relating to—

13 “(1) adequacy of internal controls and informa-  
14 tion systems, including information security and pri-  
15 vacy policies and practices, taking into account the  
16 nature and scale of business operations;

17 “(2) independence and adequacy of internal  
18 audit systems;

19 “(3) management of credit and counterparty  
20 risk, including systems to identify concentrations of  
21 credit risk and prudential limits to restrict exposure  
22 of the regulated entity to a single counterparty or  
23 groups of related counterparties;

24 “(4) management of interest rate risk exposure;

1           “(5) management of market risk, including  
2 standards that provide for systems that accurately  
3 measure, monitor, and control market risks and, as  
4 warranted, that establish limitations on market risk;

5           “(6) adequacy and maintenance of liquidity and  
6 reserves;

7           “(7) management of any asset and investment  
8 portfolio;

9           “(8) investments and acquisitions by a regu-  
10 lated entity, to ensure that they are consistent with  
11 the purposes of this Act and the authorizing stat-  
12 utes;

13           “(9) maintenance of adequate records, in ac-  
14 cordance with consistent accounting policies and  
15 practices that enable the Director to evaluate the fi-  
16 nancial condition of the regulated entity;

17           “(10) issuance of subordinated debt by that  
18 particular regulated entity, as the Director considers  
19 necessary;

20           “(11) overall risk management processes, in-  
21 cluding adequacy of oversight by senior management  
22 and the board of directors and of processes and poli-  
23 cies to identify, measure, monitor, and control mate-  
24 rial risks, including reputational risks, and for ade-  
25 quate, well-tested business resumption plans for all

1 major systems with remote site facilities to protect  
2 against disruptive events; and

3 “(12) such other operational and management  
4 standards as the Director determines to be appro-  
5 priate.

6 “(b) FAILURE TO MEET STANDARDS.—

7 “(1) PLAN REQUIREMENT.—

8 “(A) IN GENERAL.—If the Director deter-  
9 mines that a regulated entity fails to meet any  
10 standard established under subsection (a)—

11 “(i) if such standard is established by  
12 regulation, the Director shall require the  
13 regulated entity to submit an acceptable  
14 plan to the Director within the time al-  
15 lowed under subparagraph (C); and

16 “(ii) if such standard is established by  
17 guideline, the Director may require the  
18 regulated entity to submit a plan described  
19 in clause (i).

20 “(B) CONTENTS.—Any plan required  
21 under subparagraph (A) shall specify the ac-  
22 tions that the regulated entity will take to cor-  
23 rect the deficiency. If the regulated entity is  
24 undercapitalized, the plan may be a part of the

capital restoration plan for the regulated entity under section 1369C.

“(C) DEADLINES FOR SUBMISSION AND REVIEW.—The Director shall by regulation establish deadlines that—

“(i) provide the regulated entities with reasonable time to submit plans required under subparagraph (A), and generally require a regulated entity to submit a plan not later than 30 days after the Director determines that the entity fails to meet any standard established under subsection (a); and

“(ii) require the Director to act on plans expeditiously, and generally not later than 30 days after the plan is submitted.

“(2) REQUIRED ORDER UPON FAILURE TO SUBMIT OR IMPLEMENT PLAN.—If a regulated entity fails to submit an acceptable plan within the time allowed under paragraph (1)(C), or fails in any material respect to implement a plan accepted by the Director, the following shall apply:

“(A) REQUIRED CORRECTION OF DEFICIENCY.—The Director shall, by order, require the regulated entity to correct the deficiency.

1           “(B) OTHER AUTHORITY.—The Director  
2           may, by order, take one or more of the fol-  
3           lowing actions until the deficiency is corrected:

4                   “(i) Prohibit the regulated entity from  
5                   permitting its average total assets (as such  
6                   term is defined in section 1316(b)) during  
7                   any calendar quarter to exceed its average  
8                   total assets during the preceding calendar  
9                   quarter, or restrict the rate at which the  
10                  average total assets of the entity may in-  
11                  crease from one calendar quarter to an-  
12                  other.

13                  “(ii) Require the regulated entity—

14                          “(I) in the case of an enterprise,  
15                          to increase its ratio of core capital to  
16                          assets.

17                          “(II) in the case of a Federal  
18                          home loan bank, to increase its ratio  
19                          of total capital (as such term is de-  
20                          fined in section 6(a)(5) of the Federal  
21                          Home Loan Bank Act (12 U.S.C.  
22                          1426(a)(5)) to assets.

23                          “(iii) Require the regulated entity to  
24                          take any other action that the Director de-  
25                          termines will better carry out the purposes

1 of this section than any of the actions de-  
2 scribed in this subparagraph.

3 “(3) MANDATORY RESTRICTIONS.—In com-  
4 plying with paragraph (2), the Director shall take  
5 one or more of the actions described in clauses (i)  
6 through (iii) of paragraph (2)(B) if—

7 “(A) the Director determines that the reg-  
8 ulated entity fails to meet any standard pre-  
9 scribed under subsection (a);

10 “(B) the regulated entity has not corrected  
11 the deficiency; and

12 “(C) during the 18-month period before  
13 the date on which the regulated entity first  
14 failed to meet the standard, the entity under-  
15 went extraordinary growth, as defined by the  
16 Director.

17 “(c) OTHER ENFORCEMENT AUTHORITY NOT AF-  
18 FECTED.—The authority of the Director under this sec-  
19 tion is in addition to any other authority of the Director.”.

20 (b) INDEPENDENCE IN CONGRESSIONAL TESTIMONY  
21 AND RECOMMENDATIONS.—Section 111 of Public Law  
22 93–495 (12 U.S.C. 250) is amended by striking “the Fed-  
23 eral Housing Finance Board” and inserting “the Director  
24 of the Federal Housing Finance Agency”.

1 **SEC. 103. FEDERAL HOUSING ENTERPRISE BOARD.**

2 (a) IN GENERAL.—Title XIII of the Housing and  
3 Community Development Act of 1992 (12 U.S.C. 4501 et  
4 seq.) is amended by inserting after section 1313A, as  
5 added by section 102 of this Act, the following new sec-  
6 tion:

7 **“SEC. 1313B. FEDERAL HOUSING ENTERPRISE BOARD.**

8 “(a) IN GENERAL.—There is established the Federal  
9 Housing Enterprise Board, which shall advise the Director  
10 with respect to overall strategies and policies in carrying  
11 out the duties of the Director under this title.

12 “(b) LIMITATIONS.—The Board may not exercise any  
13 executive authority, and the Director may not delegate to  
14 the Board any of the functions, powers, or duties of the  
15 Director.

16 “(c) COMPOSITION.—The Board shall be comprised  
17 of 3 members, of whom—

18 “(1) one member shall be the Secretary of the  
19 Treasury;

20 “(2) one member shall be the Secretary of  
21 Housing and Urban Development; and

22 “(3) one member shall be the Director, who  
23 shall serve as the Chairperson of the Board.

24 “(d) MEETINGS.—

25 “(1) IN GENERAL.—The Board shall meet upon  
26 notice by the Director, but in no event shall the

1 Board meet less frequently than once every 3  
2 months.

3 “(2) SPECIAL MEETINGS.—Either the Secretary  
4 of the Treasury or the Secretary of Housing and  
5 Urban Development may, upon giving written notice  
6 to the Director, require a special meeting of the  
7 Board.

8 “(e) TESTIMONY.—On an annual basis, the Board  
9 shall testify before Congress regarding—

10 “(1) the safety and soundness of the regulated  
11 entities;

12 “(2) any material deficiencies in the conduct of  
13 the operations of the regulated entities;

14 “(3) the overall operational status of the regu-  
15 lated entities;

16 “(4) an evaluation of the performance of the  
17 regulated entities in carrying out their respective  
18 missions;

19 “(5) operations, resources, and performance of  
20 the Agency; and

21 “(6) such other matters relating to the Agency  
22 and its fulfillment of its mission, as the Board deter-  
23 mines appropriate.”.



1 (b) ANNUAL REPORT OF THE DIRECTOR.—Section  
2 1319B(a) of the Housing and Community Development  
3 Act of 1992 (12 U.S.C. 4521 (a)) is amended—

4 (1) in paragraph (3), by striking “and” at the  
5 end; and

6 (2) by striking paragraph (4) and inserting the  
7 following new paragraphs:

8 “(4) an assessment of the Board or any of its  
9 members with respect to—

10 “(A) the safety and soundness of the regu-  
11 lated entities;

12 “(B) any material deficiencies in the con-  
13 duct of the operations of the regulated entities;

14 “(C) the overall operational status of the  
15 regulated entities; and

16 “(D) an evaluation of the performance of  
17 the regulated entities in carrying out their mis-  
18 sions;

19 “(5) operations, resources, and performance of  
20 the Agency;

21 “(6) a description of the demographic makeup  
22 of the workforce of the Agency and the actions taken  
23 pursuant to section 1319A(b) to provide for diversity  
24 in the workforce; and

1 “(7) such other matters relating to the Agency  
2 and its fulfillment of its mission.”.

3 **SEC. 104. AUTHORITY TO REQUIRE REPORTS BY REGU-**  
4 **LATED ENTITIES.**

5 Section 1314 of the Housing and Community Devel-  
6 opment Act of 1992 (12 U.S.C. 4514) is amended—

7 (1) in the section heading, by striking “**ENTER-**  
8 **PRISES**” and inserting “**REGULATED ENTITIES**”;

9 (2) in subsection (a)—

10 (A) in the subsection heading, by striking  
11 “SPECIAL REPORTS AND REPORTS OF FINAN-  
12 CIAL CONDITION” and inserting “REGULAR  
13 AND SPECIAL REPORTS”;

14 (B) in paragraph (1)—

15 (i) in the paragraph heading, by strik-  
16 ing “FINANCIAL CONDITION” and inserting  
17 “REGULAR REPORTS”; and

18 (ii) by striking “reports of financial  
19 condition and operations” and inserting  
20 “regular reports on the condition (includ-  
21 ing financial condition), management, ac-  
22 tivities, or operations of the regulated enti-  
23 ty, as the Director considers appropriate”;  
24 and

1 (C) in paragraph (2), after “submit special  
2 reports” insert “on any of the topics specified  
3 in paragraph (1) or such other topics”; and  
4 (3) by adding at the end the following new sub-  
5 section:

6 “(c) REPORTS OF FRAUDULENT FINANCIAL TRANS-  
7 ACTIONS.—

8 “(1) REQUIREMENT TO REPORT.—The Director  
9 shall require a regulated entity to submit to the Di-  
10 rector a timely report upon discovery by the regu-  
11 lated entity that it has purchased or sold a fraudu-  
12 lent loan or financial instrument or suspects a pos-  
13 sible fraud relating to a purchase or sale of any loan  
14 or financial instrument. The Director shall require  
15 the regulated entities to establish and maintain pro-  
16 cedures designed to discover any such transactions.

17 “(2) PROTECTION FROM LIABILITY FOR RE-  
18 PORTS.—

19 “(A) IN GENERAL.—If a regulated entity  
20 makes a report pursuant to paragraph (1), or  
21 a regulated entity-affiliated party makes, or re-  
22 quires another to make, such a report, and such  
23 report is made in a good faith effort to comply  
24 with the requirements of paragraph (1), such  
25 regulated entity or regulated entity-affiliated

1 party shall not be liable to any person under  
2 any law or regulation of the United States, any  
3 constitution, law, or regulation of any State or  
4 political subdivision of any State, or under any  
5 contract or other legally enforceable agreement  
6 (including any arbitration agreement), for such  
7 report or for any failure to provide notice of  
8 such report to the person who is the subject of  
9 such report or any other person identified in  
10 the report.

11 “(B) RULE OF CONSTRUCTION.—Subpara-  
12 graph (A) shall not be construed as creating—

13 “(i) any inference that the term ‘per-  
14 son’, as used in such subparagraph, may  
15 be construed more broadly than its ordi-  
16 nary usage so as to include any govern-  
17 ment or agency of government; or

18 “(ii) any immunity against, or other-  
19 wise affecting, any civil or criminal action  
20 brought by any government or agency of  
21 government to enforce any constitution,  
22 law, or regulation of such government or  
23 agency.”.

1 **SEC. 105. DISCLOSURE OF INCOME AND CHARITABLE CON-**  
2 **TRIBUTIONS BY ENTERPRISES.**

3 Section 1314 of the Housing and Community Devel-  
4 opment Act of 1992 (12 U.S.C. 4514), as amended by  
5 the preceding provisions of this Act, is further amended  
6 by adding at the end the following new subsections:

7 “(d) DISCLOSURE OF CHARITABLE CONTRIBUTIONS  
8 BY ENTERPRISES.—

9 “(1) REQUIRED DISCLOSURE.—The Director  
10 shall, by regulation, require each enterprise to sub-  
11 mit a report annually, in a format designated by the  
12 Director, containing the following information:

13 “(A) TOTAL VALUE.—The total value of  
14 contributions made by the enterprise to non-  
15 profit organizations during its previous fiscal  
16 year.

17 “(B) SUBSTANTIAL CONTRIBUTIONS.—If  
18 the value of contributions made by the enter-  
19 prise to any nonprofit organization during its  
20 previous fiscal year exceeds the designated  
21 amount, the name of that organization and the  
22 value of contributions.

23 “(C) SUBSTANTIAL CONTRIBUTIONS TO IN-  
24 sider-affiliated charities.—Identification  
25 of each contribution whose value exceeds the  
26 designated amount that were made by the en-

1           terprise during the enterprise’s previous fiscal  
2           year to any nonprofit organization of which a  
3           director, officer, or controlling person of the en-  
4           terprise, or a spouse thereof, was a director or  
5           trustee, the name of such nonprofit organiza-  
6           tion, and the value of the contribution.

7           “(2) DEFINITIONS.—For purposes of this sub-  
8           section—

9                   “(A) the term ‘designated amount’ means  
10           such amount as may be designated by the Di-  
11           rector by regulation, consistent with the public  
12           interest and the protection of investors for pur-  
13           poses of this subsection; and

14                   “(B) the Director may, by such regulations  
15           as the Director deems necessary or appropriate  
16           in the public interest, define the terms officer  
17           and controlling person.

18           “(3) PUBLIC AVAILABILITY.—The Director  
19           shall make the information submitted pursuant to  
20           this subsection publicly available.

21           “(e) DISCLOSURE OF INCOME.—Each enterprise  
22           shall include, in each annual report filed under section 13  
23           of the Securities Exchange Act of 1934 (15 U.S.C. 78m),  
24           the income reported by the issuer to the Internal Revenue

1 Service for the most recent taxable year. Such income  
2 shall—

3 “(1) be presented in a prominent location in  
4 each such report and in a manner that permits a  
5 ready comparison of such income to income other-  
6 wise required to be included in such reports under  
7 regulations issued under such section; and

8 “(2) be submitted to the Securities and Ex-  
9 change Commission in a form and manner suitable  
10 for entry into the EDGAR system of such Commis-  
11 sion for public availability under such system.”.

12 **SEC. 106. ASSESSMENTS.**

13 Section 1316 of the Housing and Community Devel-  
14 opment Act of 1992 (12 U.S.C. 4516) is amended—

15 (1) by striking subsection (a) and inserting the  
16 following new subsection:

17 “(a) ANNUAL ASSESSMENTS.—The Director shall es-  
18 tablish and collect from the regulated entities annual as-  
19 sessments in an amount not exceeding the amount suffi-  
20 cient to provide for reasonable costs and expenses of the  
21 Agency, including—

22 “(1) the expenses of any examinations under  
23 section 1317 of this Act and under section 20 of the  
24 Federal Home Loan Bank Act;

1           “(2) the expenses of obtaining any reviews and  
2           credit assessments under section 1319;

3           “(3) such amounts in excess of actual expenses  
4           for any given year as deemed necessary by the Di-  
5           rector to maintain a working capital fund in accord-  
6           ance with subsection (e); and

7           “(4) the wind up of the affairs of the Office of  
8           Federal Housing Enterprise Oversight and the Fed-  
9           eral Housing Finance Board under title III of the  
10          Federal Housing Finance Reform Act of 2007.”;

11          (2) in subsection (b)—

12                (A) in the subsection heading, by striking  
13                “ENTERPRISES” and inserting “REGULATED  
14                ENTITIES” ;

15                (B) by realigning paragraph (2) two ems  
16                from the left margin, so as to align the left  
17                margin of such paragraph with the left margins  
18                of paragraph (1);

19                (C) in paragraph (1)—

20                   (i) by striking “Each enterprise” and  
21                   inserting “Each regulated entity”;

22                   (ii) by striking “each enterprise” and  
23                   inserting “each regulated entity”; and



1 (iii) by striking “both enterprises”  
2 and inserting “all of the regulated enti-  
3 ties”; and

4 (D) in paragraph (3)—

5 (i) in subparagraph (B), by striking  
6 “subparagraph (A)” and inserting “clause  
7 (i)”;

8 (ii) by redesignating subparagraphs  
9 (A), (B), and (C) as clauses (i), (ii) and  
10 (ii), respectively, and realigning such  
11 clauses, as so redesignated, so as to be in-  
12 dented 6 ems from the left margin;

13 (iii) by striking the matter that pre-  
14 cedes clause (i), as so redesignated, and in-  
15 serting the following:

16 “(3) DEFINITION OF TOTAL ASSETS.—For pur-  
17 poses of this section, the term ‘total assets’ means  
18 as follows:

19 “(A) ENTERPRISES.—With respect to an  
20 enterprise, the sum of—”; and

21 (iv) by adding at the end the following  
22 new subparagraph:

23 “(B) FEDERAL HOME LOAN BANKS.—With  
24 respect to a Federal home loan bank, the total  
25 assets of the Bank, as determined by the Direc-

1           tor in accordance with generally accepted ac-  
2           counting principles.”;

3           (3) by striking subsection (c) and inserting the  
4           following new subsection:

5           “(c) INCREASED COSTS OF REGULATION.—

6           “(1) INCREASE FOR INADEQUATE CAPITALIZA-  
7           TION.—The semiannual payments made pursuant to  
8           subsection (b) by any regulated entity that is not  
9           classified (for purposes of subtitle B) as adequately  
10          capitalized may be increased, as necessary, in the  
11          discretion of the Director to pay additional esti-  
12          mated costs of regulation of the regulated entity.

13          “(2) ADJUSTMENT FOR ENFORCEMENT ACTIVI-  
14          TIES.—The Director may adjust the amounts of any  
15          semiannual payments for an assessment under sub-  
16          section (a) that are to be paid pursuant to sub-  
17          section (b) by a regulated entity, as necessary in the  
18          discretion of the Director, to ensure that the costs  
19          of enforcement activities under this Act for a regu-  
20          lated entity are borne only by such regulated entity.

21          “(3) ADDITIONAL ASSESSMENT FOR DEFICI-  
22          ENCIES.—If at any time, as a result of increased  
23          costs of regulation of a regulated entity that is not  
24          classified (for purposes of subtitle B) as adequately  
25          capitalized or as the result of supervisory or enforce-

1        ment activities under this Act for a regulated entity,  
2        the amount available from any semiannual payment  
3        made by such regulated entity pursuant to sub-  
4        section (b) is insufficient to cover the costs of the  
5        Agency with respect to such entity, the Director may  
6        make and collect from such regulated entity an im-  
7        mediate assessment to cover the amount of such de-  
8        ficiency for the semiannual period. If, at the end of  
9        any semiannual period during which such an assess-  
10       ment is made, any amount remains from such as-  
11       sessment, such remaining amount shall be deducted  
12       from the assessment for such regulated entity for  
13       the following semiannual period.”;

14            (4) in subsection (d), by striking “If” and in-  
15        sserting “Except with respect to amounts collected  
16        pursuant to subsection (a)(3), if”; and

17            (5) by striking subsections (e) through (g) and  
18        inserting the following new subsections:

19        “(e) WORKING CAPITAL FUND.—At the end of each  
20        year for which an assessment under this section is made,  
21        the Director shall remit to each regulated entity any  
22        amount of assessment collected from such regulated entity  
23        that is attributable to subsection (a)(3) and is in excess  
24        of the amount the Director deems necessary to maintain  
25        a working capital fund.

1 “(f) TREATMENT OF ASSESSMENTS.—

2 “(1) DEPOSIT.—Amounts received by the Di-  
3 rector from assessments under this section may be  
4 deposited by the Director in the manner provided in  
5 section 5234 of the Revised Statutes (12 U.S.C.  
6 192) for monies deposited by the Comptroller of the  
7 Currency.

8 “(2) NOT GOVERNMENT FUNDS.—The amounts  
9 received by the Director from any assessment under  
10 this section shall not be construed to be Government  
11 or public funds or appropriated money.

12 “(3) NO APPORTIONMENT OF FUNDS.—Not-  
13 withstanding any other provision of law, the  
14 amounts received by the Director from any assess-  
15 ment under this section shall not be subject to ap-  
16 portionment for the purpose of chapter 15 of title  
17 31, United States Code, or under any other author-  
18 ity.

19 “(4) USE OF FUNDS.—The Director may use  
20 any amounts received by the Director from assess-  
21 ments under this section for compensation of the Di-  
22 rector and other employees of the Agency and for all  
23 other expenses of the Director and the Agency.

24 “(5) AVAILABILITY OF OVERSIGHT FUND  
25 AMOUNTS.—Notwithstanding any other provision of

1 law, any amounts remaining in the Federal Housing  
2 Enterprises Oversight Fund established under this  
3 section (as in effect before the effective date under  
4 section 185 of the Federal Housing Finance Reform  
5 Act of 2007), and any amounts remaining from as-  
6 sessments on the Federal Home Loan banks pursu-  
7 ant to section 18(b) of the Federal Home Loan  
8 Bank Act (12 U.S.C. 1438(b)), shall, upon such ef-  
9 fective date, be treated for purposes of this sub-  
10 section as amounts received from assessments under  
11 this section.

12 “(6) TREASURY INVESTMENTS.—

13 “(A) AUTHORITY.—The Director may re-  
14 quest the Secretary of the Treasury to invest  
15 such portions of amount received by the Direc-  
16 tor from assessments paid under this section  
17 that, in the Director’s discretion, are not re-  
18 quired to meet the current working needs of the  
19 Agency.

20 “(B) GOVERNMENT OBLIGATIONS.—Pursu-  
21 ant to a request under subparagraph (A), the  
22 Secretary of the Treasury shall invest such  
23 amounts in government obligations guaranteed  
24 as to principal and interest by the United  
25 States with maturities suitable to the needs of

1           Agency and bearing interest at a rate deter-  
2           mined by the Secretary of the Treasury taking  
3           into consideration current market yields on out-  
4           standing marketable obligations of the United  
5           States of comparable maturity.

6           “(g) BUDGET AND FINANCIAL MANAGEMENT.—

7           “(1) FINANCIAL OPERATING PLANS AND FORE-  
8           CASTS.—The Director shall provide to the Director  
9           of the Office of Management and Budget copies of  
10          the Director’s financial operating plans and fore-  
11          casts as prepared by the Director in the ordinary  
12          course of the Agency’s operations, and copies of the  
13          quarterly reports of the Agency’s financial condition  
14          and results of operations as prepared by the Direc-  
15          tor in the ordinary course of the Agency’s oper-  
16          ations.

17          “(2) FINANCIAL STATEMENTS.—The Agency  
18          shall prepare annually a statement of assets and li-  
19          abilities and surplus or deficit; a statement of in-  
20          come and expenses; and a statement of sources and  
21          application of funds.

22          “(3) FINANCIAL MANAGEMENT SYSTEMS.—The  
23          Agency shall implement and maintain financial man-  
24          agement systems that comply substantially with  
25          Federal financial management systems require-

1       ments, applicable Federal accounting standards, and  
2       that uses a general ledger system that accounts for  
3       activity at the transaction level.

4           “(4) ASSERTION OF INTERNAL CONTROLS.—  
5       The Director shall provide to the Comptroller Gen-  
6       eral an assertion as to the effectiveness of the inter-  
7       nal controls that apply to financial reporting by the  
8       Agency, using the standards established in section  
9       3512(c) of title 31, United States Code.

10          “(5) RULE OF CONSTRUCTION.—This sub-  
11       section may not be construed as implying any obliga-  
12       tion on the part of the Director to consult with or  
13       obtain the consent or approval of the Director of the  
14       Office of Management and Budget with respect to  
15       any reports, plans, forecasts, or other information  
16       referred to in paragraph (1) or any jurisdiction or  
17       oversight over the affairs or operations of the Agen-  
18       cy.

19          “(h) AUDIT OF AGENCY.—

20          “(1) IN GENERAL.—The Comptroller General  
21       shall annually audit the financial transactions of the  
22       Agency in accordance with the U.S. generally accept-  
23       ed government auditing standards as may be pre-  
24       scribed by the Comptroller General of the United  
25       States. The audit shall be conducted at the place or

1 places where accounts of the Agency are normally  
2 kept. The representatives of the Government Ac-  
3 countability Office shall have access to the personnel  
4 and to all books, accounts, documents, papers,  
5 records (including electronic records), reports, files,  
6 and all other papers, automated data, things, or  
7 property belonging to or under the control of or used  
8 or employed by the Agency pertaining to its financial  
9 transactions and necessary to facilitate the audit,  
10 and such representatives shall be afforded full facili-  
11 ties for verifying transactions with the balances or  
12 securities held by depositories, fiscal agents, and  
13 custodians. All such books, accounts, documents,  
14 records, reports, files, papers, and property of the  
15 Agency shall remain in possession and custody of  
16 the Agency. The Comptroller General may obtain  
17 and duplicate any such books, accounts, documents,  
18 records, working papers, automated data and files,  
19 or other information relevant to such audit without  
20 cost to the Comptroller General and the Comptroller  
21 General's right of access to such information shall  
22 be enforceable pursuant to section 716(c) of title 31,  
23 United States Code.

24 “(2) REPORT.—The Comptroller General shall  
25 submit to the Congress a report of each annual



1       audit conducted under this subsection. The report to  
2       the Congress shall set forth the scope of the audit  
3       and shall include the statement of assets and liabil-  
4       ities and surplus or deficit, the statement of income  
5       and expenses, the statement of sources and applica-  
6       tion of funds, and such comments and information  
7       as may be deemed necessary to inform Congress of  
8       the financial operations and condition of the Agency,  
9       together with such recommendations with respect  
10      thereto as the Comptroller General may deem advis-  
11      able. A copy of each report shall be furnished to the  
12      President and to the Agency at the time submitted  
13      to the Congress.

14           “(3) ASSISTANCE AND COSTS.—For the purpose  
15      of conducting an audit under this subsection, the  
16      Comptroller General may, in the discretion of the  
17      Comptroller General, employ by contract, without re-  
18      gard to section 5 of title 41, United States Code,  
19      professional services of firms and organizations of  
20      certified public accountants for temporary periods or  
21      for special purposes. Upon the request of the Comp-  
22      troller General, the Director of the Agency shall  
23      transfer to the Government Accountability Office  
24      from funds available, the amount requested by the  
25      Comptroller General to cover the full costs of any

1        audit and report conducted by the Comptroller Gen-  
2        eral. The Comptroller General shall credit funds  
3        transferred to the account established for salaries  
4        and expenses of the Government Accountability Of-  
5        fice, and such amount shall be available upon receipt  
6        and without fiscal year limitation to cover the full  
7        costs of the audit and report.”.

8    **SEC. 107. EXAMINERS AND ACCOUNTANTS.**

9        (a) EXAMINATIONS.—Section 1317 of the Housing  
10      and Community Development Act of 1992 (12 U.S.C.  
11      4517) is amended—

12            (1) in subsection (a), by adding after the period  
13            at the end the following: “Each examination under  
14            this subsection of a regulated entity shall include a  
15            review of the procedures required to be established  
16            and maintained by the regulated entity pursuant to  
17            section 1314(c) (relating to fraudulent financial  
18            transactions) and the report regarding each such ex-  
19            amination shall describe any problems with such  
20            procedures maintained by the regulated entity.”;

21            (2) in subsection (b)—

22                    (A) by inserting “of a regulated entity”  
23                    after “under this section”; and

24                    (B) by striking “to determine the condition  
25                    of an enterprise for the purpose of ensuring its

1 financial safety and soundness” and inserting  
2 “or appropriate”; and  
3 (3) in subsection (c)—

4 (A) in the second sentence, by inserting  
5 “to conduct examinations under this section”  
6 before the period; and

7 (B) in the third sentence, by striking  
8 “from amounts available in the Federal Hous-  
9 ing Enterprises Oversight Fund”.

10 (b) ENHANCED AUTHORITY TO HIRE EXAMINERS  
11 AND ACCOUNTANTS.—Section 1317 of the Housing and  
12 Community Development Act of 1992 (12 U.S.C. 4517)  
13 is amended by adding at the end the following new sub-  
14 section:

15 “(g) APPOINTMENT OF ACCOUNTANTS, ECONOMISTS,  
16 SPECIALISTS, AND EXAMINERS.—

17 “(1) APPLICABILITY.—This section applies with  
18 respect to any position of examiner, accountant, spe-  
19 cialist in financial markets, specialist in information  
20 technology, and economist at the Agency, with re-  
21 spect to supervision and regulation of the regulated  
22 entities, that is in the competitive service.

23 “(2) APPOINTMENT AUTHORITY.—The Director  
24 may appoint candidates to any position described in  
25 paragraph (1)—

1           “(A) in accordance with the statutes, rules,  
2           and regulations governing appointments in the  
3           excepted service; and

4           “(B) notwithstanding any statutes, rules,  
5           and regulations governing appointments in the  
6           competitive service.

7           “(3) RULE OF CONSTRUCTION.—The appoint-  
8           ment of a candidate to a position under the author-  
9           ity of this subsection shall not be considered to  
10          cause such position to be converted from the com-  
11          petitive service to the excepted service.”.

12          (c) REPEAL.—Section 20 of the Federal Home Loan  
13 Bank Act (12 U.S.C. 1440) is amended—

14           (1) by striking the section heading and insert-  
15           ing the following: “EXAMINATIONS AND GAO AU-  
16           DITS”;

17           (2) in the third sentence, by striking “the  
18           Board and” each place such term appears; and

19           (3) by striking the first two sentences and in-  
20           serting the following: “The Federal home loan banks  
21           shall be subject to examinations by the Director to  
22           the extent provided in section 1317 of the Federal  
23           Housing Enterprises Financial Safety and Sound-  
24           ness Act of 1992 (12 U.S.C. 4517).”.

1 **SEC. 108. PROHIBITION AND WITHHOLDING OF EXECUTIVE**  
2 **COMPENSATION.**

3 (a) IN GENERAL.—Section 1318 of the Housing and  
4 Community Development Act of 1992 (12 U.S.C. 4518)  
5 is amended—

6 (1) in the section heading, by striking “**OF EX-**  
7 **CESSIVE**” and inserting “**AND WITHHOLDING OF**  
8 **EXECUTIVE**”;

9 (2) by redesignating subsection (b) as sub-  
10 section (d); and

11 (3) by inserting after subsection (a) the fol-  
12 lowing new subsections:

13 “(b) FACTORS.—In making any determination under  
14 subsection (a), the Director may take into consideration  
15 any factors the Director considers relevant, including any  
16 wrongdoing on the part of the executive officer, and such  
17 wrongdoing shall include any fraudulent act or omission,  
18 breach of trust or fiduciary duty, violation of law, rule,  
19 regulation, order, or written agreement, and insider abuse  
20 with respect to the regulated entity. The approval of an  
21 agreement or contract pursuant to section 309(d)(3)(B)  
22 of the Federal National Mortgage Association Charter Act  
23 (12 U.S.C. 1723a(d)(3)(B)) or section 303(h)(2) of the  
24 Federal Home Loan Mortgage Corporation Act (12 U.S.C.  
25 1452(h)(2)) shall not preclude the Director from making  
26 any subsequent determination under subsection (a).

1       “(c) WITHHOLDING OF COMPENSATION.—In car-  
2       rying out subsection (a), the Director may require a regu-  
3       lated entity to withhold any payment, transfer, or dis-  
4       bursement of compensation to an executive officer, or to  
5       place such compensation in an escrow account, during the  
6       review of the reasonableness and comparability of com-  
7       pensation.”.

8       (b) CONFORMING AMENDMENTS.—

9               (1) FANNIE MAE.—Section 309(d) of the Fed-  
10       eral National Mortgage Association Charter Act (12  
11       U.S.C. 1723a(d)) is amended by adding at the end  
12       the following new paragraph:

13       “(4) Notwithstanding any other provision of this sec-  
14       tion, the corporation shall not transfer, disburse, or pay  
15       compensation to any executive officer, or enter into an  
16       agreement with such executive officer, without the ap-  
17       proval of the Director, for matters being reviewed under  
18       section 1318 of the Federal Housing Enterprises Finan-  
19       cial Safety and Soundness Act of 1992 (12 U.S.C.  
20       4518).”.

21               (2) FREDDIE MAC.—Section 303(h) of the Fed-  
22       eral Home Loan Mortgage Corporation Act (12  
23       U.S.C. 1452(h)) is amended by adding at the end  
24       the following new paragraph:

1       “(4) Notwithstanding any other provision of this sec-  
2       tion, the Corporation shall not transfer, disburse, or pay  
3       compensation to any executive officer, or enter into an  
4       agreement with such executive officer, without the ap-  
5       proval of the Director, for matters being reviewed under  
6       section 1318 of the Federal Housing Enterprises Finan-  
7       cial Safety and Soundness Act of 1992 (12 U.S.C.  
8       4518).”.

9               (3) FEDERAL HOME LOAN BANKS.—Section 7  
10       of the Federal Home Loan Bank Act (12 U.S.C.  
11       1427) is amended by adding at the end the following  
12       new subsection:

13       “(1) WITHHOLDING OF COMPENSATION.—Notwith-  
14       standing any other provision of this section, a Federal  
15       home loan bank shall not transfer, disburse, or pay com-  
16       pensation to any executive officer, or enter into an agree-  
17       ment with such executive officer, without the approval of  
18       the Director, for matters being reviewed under section  
19       1318 of the Federal Housing Enterprises Financial Safety  
20       and Soundness Act of 1992 (12 U.S.C. 4518).”.

21       **SEC. 109. REVIEWS OF REGULATED ENTITIES.**

22       Section 1319 of the Housing and Community Devel-  
23       opment Act of 1992 (12 U.S.C. 4519) is amended—

24               (1) by striking the section designation and  
25       heading and inserting the following:

1 **“SEC. 1319. REVIEWS OF REGULATED ENTITIES.”;**

2 and

3 (2) by striking “is a nationally recognized” and  
 4 all that follows through “1934” and inserting the  
 5 following: “the Director considers appropriate, in-  
 6 cluding an entity that is registered under section 15  
 7 of the Securities Exchange Act of 1934 (15 U.S.C.  
 8 78a) as a nationally registered statistical rating or-  
 9 ganization”.

10 **SEC. 110. INCLUSION OF MINORITIES AND WOMEN; DIVER-**  
 11 **SITY IN AGENCY WORKFORCE.**

12 Section 1319A of the Housing and Community De-  
 13 velopment Act of 1992 (12 U.S.C. 4520) is amended—

14 (1) in the section heading, by striking “**EQUAL**  
 15 **OPPORTUNITY IN SOLICITATION OF CON-**  
 16 **TRACTS**” and inserting “**MINORITY AND WOMEN**  
 17 **INCLUSION; DIVERSITY REQUIREMENTS**”;

18 (2) in subsection (a), by striking “(a) IN GEN-  
 19 ERAL.—Each enterprise” and inserting “(e) OUT-  
 20 REACH.—Each regulated entity”; and

21 (3) by striking subsection (b);

22 (4) by inserting before subsection (e), as so re-  
 23 designated by paragraph (2) of this section, the fol-  
 24 lowing new subsections:

25 “(a) OFFICE OF MINORITY AND WOMEN INCLU-  
 26 SION.—Each regulated entity shall establish an Office of



1 Minority and Women Inclusion, or designate an office of  
2 the entity, that shall be responsible for carrying out this  
3 section and all matters of the entity relating to diversity  
4 in management, employment, and business activities in ac-  
5 cordance with such standards and requirements as the Di-  
6 rector shall establish.

7       “(b) INCLUSION IN ALL LEVELS OF BUSINESS AC-  
8 TIVITIES.—Each regulated entity shall develop and imple-  
9 ment standards and procedures to ensure, to the max-  
10 imum extent possible, the inclusion and utilization of mi-  
11 norities (as such term is defined in section 1204(c) of the  
12 Financial Institutions Reform, Recovery, and Enforce-  
13 ment Act of 1989 (12 U.S.C. 1811 note)) and women,  
14 and minority- and women-owned businesses (as such  
15 terms are defined in section 21A(r)(4) of the Federal  
16 Home Loan Bank Act (12 U.S.C. 1441a(r)(4)) (including  
17 financial institutions, investment banking firms, mortgage  
18 banking firms, asset management firms, broker-dealers, fi-  
19 nancial services firms, underwriters, accountants, brokers,  
20 investment consultants, and providers of legal services) in  
21 all business and activities of the regulated entity at all  
22 levels, including in procurement, insurance, and all types  
23 of contracts (including contracts for the issuance or guar-  
24 antee of any debt, equity, or mortgage-related securities,  
25 the management of its mortgage and securities portfolios,

1 the making of its equity investments, the purchase, sale  
2 and servicing of single- and multi-family mortgage loans,  
3 and the implementation of its affordable housing program  
4 and initiatives). The processes established by each regu-  
5 lated entity for review and evaluation for contract pro-  
6 posals and to hire service providers shall include a compo-  
7 nent that gives consideration to the diversity of the appli-  
8 cant.

9 “(c) APPLICABILITY.—This section shall apply to all  
10 contracts of a regulated entity for services of any kind,  
11 including services that require the services of investment  
12 banking, asset management entities, broker-dealers, finan-  
13 cial services entities, underwriters, accountants, invest-  
14 ment consultants, and providers of legal services.

15 “(d) INCLUSION IN ANNUAL REPORTS.—Each regu-  
16 lated entity shall include, in the annual report submitted  
17 by the entity to the Director pursuant to section 309(k)  
18 of the Federal National Mortgage Association Charter Act  
19 (12 U.S.C. 1723a(k)), section 307(c) of the Federal Home  
20 Loan Mortgage Corporation Act (12 U.S.C. 1456(c)), and  
21 section 20 of the Federal Home Loan Bank Act (12  
22 U.S.C. 1440), as applicable, detailed information describ-  
23 ing the actions taken by the entity pursuant to this sec-  
24 tion, which shall include a statement of the total amounts  
25 paid by the entity to third party contractors since the last

1 such report and the percentage of such amounts paid to  
2 businesses described in subsection (b) of this section.”;  
3 and

4 (5) by adding at the end the following new sub-  
5 section:

6 “(f) DIVERSITY IN AGENCY WORKFORCE.—The  
7 Agency shall take affirmative steps to seek diversity in its  
8 workforce at all levels of the agency consistent with the  
9 demographic diversity of the United States, which shall  
10 include—

11 “(1) heavily recruiting at historically Black col-  
12 leges and universities, Hispanic-serving institutions,  
13 women’s colleges, and colleges that typically serve  
14 majority minority populations;

15 “(2) sponsoring and recruiting at job fairs in  
16 urban communities, and placing employment adver-  
17 tisements in newspapers and magazines oriented to-  
18 ward women and people of color;

19 “(3) partnering with organizations that are fo-  
20 cused on developing opportunities for minorities and  
21 women to place talented young minorities and  
22 women in industry internships, summer employment,  
23 and full-time positions; and

24 “(4) where feasible, partnering with inner-city  
25 high schools, girls’ high schools, and high schools

1 with majority minority populations to establish or  
2 enhance financial literacy programs and provide  
3 mentoring.”.

4 **SEC. 111. REGULATIONS AND ORDERS.**

5 Section 1319G of the Housing and Community De-  
6 velopment Act of 1992 (12 U.S.C. 4526) is amended—

7 (1) by striking subsection (a) and inserting the  
8 following new subsection:

9 “(a) **AUTHORITY.**—The Director shall issue any reg-  
10 ulations, guidelines, and orders necessary to carry out the  
11 duties of the Director under this title and each of the au-  
12 thorizing statutes to ensure that the purposes of this title  
13 and such statutes are accomplished.”;

14 (2) in subsection (b), by inserting “, this title,  
15 or any of the authorizing statutes” after “under this  
16 section”; and

17 (3) by striking subsection (c).

18 **SEC. 112. NON-WAIVER OF PRIVILEGES.**

19 Part 1 of subtitle A of title XIII of the Housing and  
20 Community Development Act of 1992 (12 U.S.C. 4511)  
21 is amended by adding at the end the following new section:

22 **“SEC. 1319H. PRIVILEGES NOT AFFECTED BY DISCLOSURE.**

23 “(a) **IN GENERAL.**—The submission by any person  
24 of any information to the Agency for any purpose in the  
25 course of any supervisory or regulatory process of the

1 Agency shall not be construed as waiving, destroying, or  
 2 otherwise affecting any privilege such person may claim  
 3 with respect to such information under Federal or State  
 4 law as to any person or entity other than the Agency.

5 “(b) RULE OF CONSTRUCTION.—No provision of sub-  
 6 section (a) may be construed as implying or establishing  
 7 that—

8 “(1) any person waives any privilege applicable  
 9 to information that is submitted or transferred  
 10 under any circumstance to which subsection (a) does  
 11 not apply; or

12 “(2) any person would waive any privilege ap-  
 13 plicable to any information by submitting the infor-  
 14 mation to the Agency, but for this subsection.”.

15 **SEC. 113. RISK-BASED CAPITAL REQUIREMENTS.**

16 (a) IN GENERAL.—Section 1361 of the Housing and  
 17 Community Development Act of 1992 (12 U.S.C. 4611)  
 18 is amended to read as follows:

19 **“SEC. 1361. RISK-BASED CAPITAL LEVELS FOR REGULATED**  
 20 **ENTITIES.**

21 “(a) IN GENERAL.—

22 “(1) ENTERPRISES.—The Director shall, by  
 23 regulation, establish risk-based capital requirements  
 24 for the enterprises to ensure that the enterprises op-  
 25 erate in a safe and sound manner, maintaining suffi-

1       cient capital and reserves to support the risks that  
2       arise in the operations and management of the en-  
3       terprises.

4           “(2) FEDERAL HOME LOAN BANKS.—The Di-  
5       rector shall establish risk-based capital standards  
6       under section 6 of the Federal Home Loan Bank  
7       Act for the Federal home loan banks.

8           “(b) CONFIDENTIALITY OF INFORMATION.—Any per-  
9       son that receives any book, record, or information from  
10      the Director or a regulated entity to enable the risk-based  
11      capital requirements established under this section to be  
12      applied shall—

13           “(1) maintain the confidentiality of the book,  
14      record, or information in a manner that is generally  
15      consistent with the level of confidentiality established  
16      for the material by the Director or the regulated en-  
17      tity; and

18           “(2) be exempt from section 552 of title 5,  
19      United States Code, with respect to the book,  
20      record, or information.

21           “(c) NO LIMITATION.—Nothing in this section shall  
22      limit the authority of the Director to require other reports  
23      or undertakings, or take other action, in furtherance of  
24      the responsibilities of the Director under this Act.”.

1 (b) FEDERAL HOME LOAN BANKS RISK-BASED CAP-  
2 ITAL.—Section 6(a)(3) of the Federal Home Loan Bank  
3 Act (12 U.S.C. 1426(a)(3)) is amended—

4 (1) by striking subparagraph (A) and inserting  
5 the following new subparagraph:

6 “(A) RISK-BASED CAPITAL STANDARDS.—

7 The Director shall, by regulation, establish risk-  
8 based capital standards for the Federal home  
9 loan banks to ensure that the Federal home  
10 loan banks operate in a safe and sound manner,  
11 with sufficient permanent capital and reserves  
12 to support the risks that arise in the operations  
13 and management of the Federal home loans  
14 banks.”; and

15 (2) in subparagraph (B), by striking “(A)(ii)”  
16 and inserting “(A)”.

17 **SEC. 114. MINIMUM AND CRITICAL CAPITAL LEVELS.**

18 (a) MINIMUM CAPITAL LEVEL.—Section 1362 of the  
19 Housing and Community Development Act of 1992 (12  
20 U.S.C. 4612) is amended—

21 (1) in subsection (a), by striking “IN GEN-  
22 ERAL” and inserting “ENTERPRISES”; and

23 (2) by striking subsection (b) and inserting the  
24 following new subsections:

1       “(b) FEDERAL HOME LOAN BANKS.—For purposes  
2 of this subtitle, the minimum capital level for each Federal  
3 home loan bank shall be the minimum capital required to  
4 be maintained to comply with the leverage requirement for  
5 the bank established under section 6(a)(2) of the Federal  
6 Home Loan Bank Act (12 U.S.C. 1426(a)(2)).

7       “(c) ESTABLISHMENT OF REVISED MINIMUM CAP-  
8 ITAL LEVELS.—Notwithstanding subsections (a) and (b)  
9 and notwithstanding the capital classifications of the regu-  
10 lated entities, the Director may, by regulations issued  
11 under section 1319G, establish a minimum capital level  
12 for the enterprises, for the Federal home loan banks, or  
13 for both the enterprises and the banks, that is higher than  
14 the level specified in subsection (a) for the enterprises or  
15 the level specified in subsection (b) for the Federal home  
16 loan banks, to the extent needed to ensure that the regu-  
17 lated entities operate in a safe and sound manner.

18       “(d) AUTHORITY TO REQUIRE TEMPORARY IN-  
19 CREASE.—Notwithstanding subsections (a) and (b) and  
20 any minimum capital level established pursuant to sub-  
21 section (c), the Director may, by order, increase the min-  
22 imum capital level for a regulated entity on a temporary  
23 basis for such period as the Director may provide if the  
24 Director—



1           “(1) makes any determination specified in sub-  
2       paragraphs (A) through (C) of section 1364(c)(1);

3           “(2) determines that the regulated entity has  
4       violated any of the prudential standards established  
5       pursuant to section 1313A and, as a result of such  
6       violation, determines that an unsafe and unsound  
7       condition exists; or

8           “(3) determines that an unsafe and unsound  
9       condition exists, except that a temporary increase in  
10      minimum capital imposed on a regulated entity pur-  
11      suant to this paragraph shall not remain in place for  
12      a period of more than 6 months unless the Director  
13      makes a renewed determination of the existence of  
14      an unsafe and unsound condition.

15      “(e) AUTHORITY TO ESTABLISH ADDITIONAL CAP-  
16      ITAL AND RESERVE REQUIREMENTS FOR PARTICULAR  
17      PROGRAMS.—The Director may, at any time by order or  
18      regulation, establish such capital or reserve requirements  
19      with respect to any program or activity of a regulated enti-  
20      ty as the Director considers appropriate to ensure that  
21      the regulated entity operates in a safe and sound manner,  
22      with sufficient capital and reserves to support the risks  
23      that arise in the operations and management of the regu-  
24      lated entity.

1       “(f) PERIODIC REVIEW.—The Director shall periodi-  
2 cally review the amount of core capital maintained by the  
3 enterprises, the amount of capital retained by the Federal  
4 home loan banks, and the minimum capital levels estab-  
5 lished for such regulated entities pursuant to this section.  
6 The Director shall rescind any temporary minimum cap-  
7 ital level increase if the Director determines that the cir-  
8 cumstances or facts justifying the temporary increase are  
9 no longer present.”.

10       (b) CRITICAL CAPITAL LEVELS.—

11               (1) IN GENERAL.—Section 1363 of the Housing  
12 and Community Development Act of 1992 (12  
13 U.S.C. 4613) is amended—

14                       (A) by striking “For” and inserting “(a)  
15 ENTERPRISES.—FOR”; and

16                       (B) by adding at the end the following new  
17 subsection:

18       “(b) FEDERAL HOME LOAN BANKS.—

19               “(1) IN GENERAL.—For purposes of this sub-  
20 title, the critical capital level for each Federal home  
21 loan bank shall be such amount of capital as the Di-  
22 rector shall, by regulation require.

23               “(2) CONSIDERATION OF OTHER CRITICAL CAP-  
24 ITAL LEVELS.—In establishing the critical capital  
25 level under paragraph (1) for the Federal home loan

1 banks, the Director shall take due consideration of  
2 the critical capital level established under subsection  
3 (a) for the enterprises, with such modifications as  
4 the Director determines to be appropriate to reflect  
5 the difference in operations between the banks and  
6 the enterprises.”.

7 (2) REGULATIONS.—Not later than the expira-  
8 tion of the 180-day period beginning on the effective  
9 date under section 185, the Director of the Federal  
10 Housing Finance Agency shall issue regulations pur-  
11 suant to section 1363(b) of the Housing and Com-  
12 munity Development Act of 1992 (as added by para-  
13 graph (1) of this subsection) establishing the critical  
14 capital level under such section.

15 **SEC. 115. REVIEW OF AND AUTHORITY OVER ENTERPRISE**  
16 **ASSETS AND LIABILITIES.**

17 (a) IN GENERAL.—Subtitle B of title XIII of the  
18 Housing and Community Development Act of 1992 (12  
19 U.S.C. 4611 et seq.) is amended—

20 (1) by striking the subtitle designation and  
21 heading and inserting the following:

1 **“Subtitle B—Required Capital Lev-**  
 2 **els for Regulated Entities, Spe-**  
 3 **cial Enforcement Powers, and**  
 4 **Reviews of Assets and Liabil-**  
 5 **ities”;**

6 and

7 (2) by adding at the end the following new sec-  
 8 tion:

9 **“SEC. 1369E. REVIEWS OF ENTERPRISE ASSETS AND LIABIL-**  
 10 **ITIES.**

11 “(a) IN GENERAL.—The Director shall, by regula-  
 12 tion, establish standards by which the portfolio holdings,  
 13 or rate of growth of the portfolio holdings, of the enter-  
 14 prises will be deemed to be consistent with the mission  
 15 and the safe and sound operations of the enterprises. In  
 16 developing such standards, the Director shall consider—

17 “(1) the size or growth of the mortgage market;

18 “(2) the need for the portfolio in maintaining li-  
 19 quidity or stability of the secondary mortgage mar-  
 20 ket (including the market for the mortgage-backed  
 21 securities the enterprises issue);

22 “(3) the need for an inventory of mortgages in  
 23 connection with securitizations;

1           “(4) the need for the portfolio to directly sup-  
2       port the affordable housing mission of the enter-  
3       prises;

4           “(5) the liquidity needs of the enterprises;

5           “(6) any potential risks posed to the enterprises  
6       by the nature of the portfolio holdings; and

7           “(7) any additional factors that the Director  
8       determines to be necessary to carry out the purpose  
9       under the first sentence of this subsection to estab-  
10      lish standards for assessing whether the portfolio  
11      holdings are consistent with the mission and safe  
12      and sound operations of the enterprises.

13       “(b) TEMPORARY ADJUSTMENTS.—The Director  
14      may, by order, make temporary adjustments to the estab-  
15      lished standards for an enterprise or both enterprises,  
16      such as during times of economic distress or market dis-  
17      ruption.

18       “(c) AUTHORITY TO REQUIRE DISPOSITION OR AC-  
19      QUISITION.—The Director shall monitor the portfolio of  
20      each enterprise. Pursuant to subsection (a) and notwith-  
21      standing the capital classifications of the enterprises, the  
22      Director may, by order, require an enterprise, under such  
23      terms and conditions as the Director determines to be ap-  
24      propriate, to dispose of or acquire any asset, if the Direc-

1 tor determines that such action is consistent with the pur-  
 2 poses of this Act or any of the authorizing statutes.”.

3 (b) REGULATIONS.—Not later than the expiration of  
 4 the 180-day period beginning on the effective date under  
 5 section 185, the Director of the Federal Housing Finance  
 6 Agency shall issue regulations pursuant to section  
 7 1369E(a) of the Housing and Community Development  
 8 Act of 1992 (as added by subsection (a) of this section)  
 9 establishing the portfolio holdings standards under such  
 10 section.

11 **SEC. 116. CORPORATE GOVERNANCE OF ENTERPRISES.**

12 The Housing and Community Development Act of  
 13 1992 is amended by inserting before section 1323 (12  
 14 U.S.C. 4543) the following new section:

15 **“SEC. 1322A. CORPORATE GOVERNANCE OF ENTERPRISES.**

16 “(a) BOARD OF DIRECTORS.—

17 “(1) INDEPENDENCE.—A majority of seated  
 18 members of the board of directors of each enterprise  
 19 shall be independent board members, as defined  
 20 under rules set forth by the New York Stock Ex-  
 21 change, as such rules may be amended from time to  
 22 time.

23 “(2) FREQUENCY OF MEETINGS.—To carry out  
 24 its obligations and duties under applicable laws,  
 25 rules, regulations, and guidelines, the board of direc-

1       tors of an enterprise shall meet at least eight times  
2       a year and not less than once a calendar quarter.

3           “(3) NON-MANAGEMENT BOARD MEMBER  
4       MEETINGS.—The non-management directors of an  
5       enterprise shall meet at regularly scheduled execu-  
6       tive sessions without management participation.

7           “(4) QUORUM; PROHIBITION ON PROXIES.—For  
8       the transaction of business, a quorum of the board  
9       of directors of an enterprise shall be at least a ma-  
10      jority of the seated board of directors and a board  
11      member may not vote by proxy.

12          “(5) INFORMATION.—The management of an  
13      enterprise shall provide a board member of the en-  
14      terprise with such adequate and appropriate infor-  
15      mation that a reasonable board member would find  
16      important to the fulfillment of his or her fiduciary  
17      duties and obligations.

18          “(6) ANNUAL REVIEW.—At least annually, the  
19      board of directors of each enterprise shall review,  
20      with appropriate professional assistance, the require-  
21      ments of laws, rules, regulations, and guidelines that  
22      are applicable to its activities and duties.

23          “(b) COMMITTEES OF BOARDS OF DIRECTORS.—

24           “(1) FREQUENCY OF MEETINGS.—Any com-  
25      mittee of the board of directors of an enterprise

1 shall meet with sufficient frequency to carry out its  
2 obligations and duties under applicable laws, rules,  
3 regulations, and guidelines.

4 “(2) REQUIRED COMMITTEES.—Each enterprise  
5 shall provide for the establishment, however styled,  
6 of the following committees of the board of directors:

7 “(A) Audit committee.

8 “(B) Compensation committee.

9 “(C) Nominating/corporate governance  
10 committee.

11 Such committees shall be in compliance with the  
12 charter, independence, composition, expertise, duties,  
13 responsibilities, and other requirements set forth  
14 under section 10A(m) of the Securities Exchange  
15 Act of 1934 (15 U.S.C. 78j–1(m)), with respect to  
16 the audit committee, and under rules issued by the  
17 New York Stock Exchange, as such rules may be  
18 amended from time to time.

19 “(c) COMPENSATION.—

20 “(1) IN GENERAL.—The compensation of board  
21 members, executive officers, and employees of an en-  
22 terprise—

23 “(A) shall not be in excess of that which  
24 is reasonable and appropriate;



1           “(B) shall be commensurate with the du-  
2           ties and responsibilities of such persons;

3           “(C) shall be consistent with the long-term  
4           goals of the enterprise;

5           “(D) shall not focus solely on earnings per-  
6           formance, but shall take into account risk man-  
7           agement, operational stability and legal and  
8           regulatory compliance as well; and

9           “(E) shall be undertaken in a manner that  
10          complies with applicable laws, rules, and regula-  
11          tions.

12          “(2) REIMBURSEMENT.—If an enterprise is re-  
13          quired to prepare an accounting restatement due to  
14          the material noncompliance of the enterprise, as a  
15          result of misconduct, with any financial reporting re-  
16          quirement under the securities laws, the chief execu-  
17          tive officer and chief financial officer of the enter-  
18          prise shall reimburse the enterprise as provided  
19          under section 304 of the Sarbanes-Oxley Act of  
20          2002 (15 U.S.C. 7243). This provision does not oth-  
21          erwise limit the authority of the Agency to employ  
22          remedies available to it under its enforcement au-  
23          thorities.

24          “(d) CODE OF CONDUCT AND ETHICS.—

1           “(1) IN GENERAL.—An enterprise shall estab-  
2       lish and administer a written code of conduct and  
3       ethics that is reasonably designed to assure the abil-  
4       ity of board members, executive officers, and em-  
5       ployees of the enterprise to discharge their duties  
6       and responsibilities, on behalf of the enterprise, in  
7       an objective and impartial manner, and that includes  
8       standards required under section 406 of the Sar-  
9       banes-Oxley Act of 2002 (15 U.S.C. 7264) and  
10      other applicable laws, rules, and regulations.

11          “(2) REVIEW.—Not less than once every three  
12      years, an enterprise shall review the adequacy of its  
13      code of conduct and ethics for consistency with prac-  
14      tices appropriate to the enterprise and make any ap-  
15      propriate revisions to such code.

16          “(e) CONDUCT AND RESPONSIBILITIES OF BOARD OF  
17      DIRECTORS.—The board of directors of an enterprise shall  
18      be responsible for directing the conduct and affairs of the  
19      enterprise in furtherance of the safe and sound operation  
20      of the enterprise and shall remain reasonably informed of  
21      the condition, activities, and operations of the enterprise.  
22      The responsibilities of the board of directors shall include  
23      having in place adequate policies and procedures to assure  
24      its oversight of, among other matters, the following:

1           “(1) Corporate strategy, major plans of action,  
2           risk policy, programs for legal and regulatory com-  
3           pliance and corporate performance, including pru-  
4           dent plans for growth and allocation of adequate re-  
5           sources to manage operations risk.

6           “(2) Hiring and retention of qualified executive  
7           officers and succession planning for such executive  
8           officers.

9           “(3) Compensation programs of the enterprise.

10          “(4) Integrity of accounting and financial re-  
11          porting systems of the enterprise, including inde-  
12          pendent audits and systems of internal control.

13          “(5) Process and adequacy of reporting, disclo-  
14          sures, and communications to shareholders, inves-  
15          tors, and potential investors.

16          “(6) Extensions of credit to board members and  
17          executive officers.

18          “(7) Responsiveness of executive officers in pro-  
19          viding accurate and timely reports to Federal regu-  
20          lators and in addressing the supervisory concerns of  
21          Federal regulators in a timely and appropriate man-  
22          ner.

23          “(f) PROHIBITION OF EXTENSIONS OF CREDIT.—An  
24          enterprise may not directly or indirectly, including  
25          through any subsidiary, extend or maintain credit, arrange

1 for the extension of credit, or renew an extension of credit,  
2 in the form of a personal loan to or for any board member  
3 or executive officer of the enterprise, as provided by sec-  
4 tion 13(k) of the Securities Exchange Act of 1934 (15  
5 U.S.C. 78m(k)).

6 “(g) CERTIFICATION OF DISCLOSURES.—The chief  
7 executive officer and the chief financial officer of an enter-  
8 prise shall review each quarterly report and annual report  
9 issued by the enterprise and such reports shall include cer-  
10 tifications by such officers as required by section 302 of  
11 the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7241).

12 “(h) CHANGE OF AUDIT PARTNER.—An enterprise  
13 may not accept audit services from an external auditing  
14 firm if the lead or coordinating audit partner who has pri-  
15 mary responsibility for the external audit of the enterprise,  
16 or the external audit partner who has responsibility for  
17 reviewing the external audit has performed audit services  
18 for the enterprise in each of the five previous fiscal years.

19 “(i) COMPLIANCE PROGRAM.—

20 “(1) REQUIREMENT.—Each enterprise shall es-  
21 tablish and maintain a compliance program that is  
22 reasonably designed to assure that the enterprise  
23 complies with applicable laws, rules, regulations, and  
24 internal controls.

1           “(2) COMPLIANCE OFFICER.—The compliance  
2       program of an enterprise shall be headed by a com-  
3       pliance officer, however styled, who reports directly  
4       to the chief executive officer of the enterprise. The  
5       compliance officer shall report regularly to the board  
6       of directors or an appropriate committee of the  
7       board of directors on compliance with and the ade-  
8       quacy of current compliance policies and procedures  
9       of the enterprise, and shall recommend any adjust-  
10      ments to such policies and procedures that the com-  
11      pliance officer considers necessary and appropriate.

12      “(j) RISK MANAGEMENT PROGRAM.—

13           “(1) REQUIREMENT.—Each enterprise shall es-  
14      tablish and maintain a risk management program  
15      that is reasonably designed to manage the risks of  
16      the operations of the enterprise.

17           “(2) RISK MANAGEMENT OFFICER.—The risk  
18      management program of an enterprise shall be head-  
19      ed by a risk management officer, however styled,  
20      who reports directly to the chief executive officer of  
21      the enterprise. The risk management officer shall re-  
22      port regularly to the board of directors or an appro-  
23      priate committee of the board of directors on compli-  
24      ance with and the adequacy of current risk manage-  
25      ment policies and procedures of the enterprise, and

1 shall recommend any adjustments to such policies  
2 and procedures that the risk management officer  
3 considers necessary and appropriate.

4 “(k) COMPLIANCE WITH OTHER LAWS.—

5 “(1) DEREGISTERED OR UNREGISTERED COM-  
6 MON STOCK.—If an enterprise deregisters or has not  
7 registered its common stock with the Securities and  
8 Exchange Commission under the Securities Ex-  
9 change Act of 1934, the enterprise shall comply or  
10 continue to comply with sections 10A(m) and 13(k)  
11 of the Securities Exchange Act of 1934 (15 U.S.C.  
12 78j–1(m), 78m(k)) and sections 302, 304, and 406  
13 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7241,  
14 7243, 7264), subject to such requirements as pro-  
15 vided by subsection (l) of this section.

16 “(2) REGISTERED COMMON STOCK.—An enter-  
17 prise that has its common stock registered with the  
18 Securities and Exchange Commission shall maintain  
19 such registered status, unless it provides 60 days  
20 prior written notice to the Director stating its intent  
21 to deregister and its understanding that it will re-  
22 main subject to the requirements of the sections of  
23 the Securities Exchange Act of 1934 and the Sar-  
24 banes-Oxley Act of 2002, subject to such require-  
25 ments as provided by subsection (l) of this section.

1       “(l) OTHER MATTERS.—The Director may from time  
 2 to time establish standards, by regulation, order, or guide-  
 3 line, regarding such other corporate governance matters  
 4 of the enterprises as the Director considers appropriate.

5       “(m) MODIFICATION OF STANDARDS.—In connection  
 6 with standards of Federal or State law (including the Re-  
 7 vised Model Corporation Act) or New York Stock Ex-  
 8 change rules that are made applicable to an enterprise by  
 9 section 1710.10 of the Director’s rules (12 CFR 1710.10)  
 10 and by subsections (a), (b), (g), (i), (j), and (k) of this  
 11 section, the Director, in the Director’s sole discretion, may  
 12 modify the standards contained in this section or in part  
 13 1710 of the Director’s rules (12 CFR Part 1710) in ac-  
 14 cordance with section 553 of title 5, United States Code,  
 15 and upon written notice to the enterprise.”.

16 **SEC. 117. REQUIRED REGISTRATION UNDER SECURITIES**  
 17 **EXCHANGE ACT OF 1934.**

18       The Housing and Community Development Act of  
 19 1992 is amended by adding after section 1322A, as added  
 20 by the preceding provisions of this Act, the following new  
 21 section:

22 **“SEC. 1322B. REQUIRED REGISTRATION UNDER SECURI-**  
 23 **TIES EXCHANGE ACT OF 1934.**

24       “(a) IN GENERAL.—Each regulated entity shall reg-  
 25 ister at least one class of the capital stock of such regu-

lated entity, and maintain such registration with the Securities and Exchange Commission, under the Securities Exchange Act of 1934.

“(b) ENTERPRISES.—Each enterprise shall comply with sections 14 and 16 of the Securities Exchange Act of 1934.”.

**SEC. 118. LIAISON WITH FINANCIAL INSTITUTIONS EXAMINATION COUNCIL.**

Section 1007 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3306) is amended—

(1) in the section heading, by inserting after “STATE” the following: “AND FEDERAL HOUSING FINANCE AGENCY”; and

(2) by inserting after “financial institutions” the following: “, and one representative of the Federal Housing Finance Agency,”.

**SEC. 119. GUARANTEE FEE STUDY.**

(a) IN GENERAL.—The Director of the Federal Housing Finance Agency, in consultation with the heads of the federal banking agencies, shall, not later than 18 months after the date of the enactment of this Act, submit to the Congress a study concerning the pricing, transparency and reporting of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corpora-



1 tion, and the Federal home loan banks with regard to  
2 guarantee fees and concerning analogous practices, trans-  
3 parency and reporting requirements (including advances  
4 pricing practices by the Federal Home Loan Banks) of  
5 other participants in the business of mortgage purchases  
6 and securitization.

7 (b) FACTORS.—The study required by this section  
8 shall examine various factors such as credit risk,  
9 counterparty risk considerations, economic value consider-  
10 ations, and volume considerations used by the regulated  
11 entities (as such term is defined in section 1303 of the  
12 Housing and Community Development Act of 1992) in-  
13 cluded in the study in setting the amount of fees they  
14 charge.

15 (c) CONTENTS OF REPORT.—The report required  
16 under subsection (a) shall identify and analyze—

17 (1) the factors used by each enterprise (as such  
18 term is defined in section 1303 of the Housing and  
19 Community Development Act of 1992) in deter-  
20 mining the amount of the guarantee fees it charges;

21 (2) the total revenue the enterprises earn from  
22 guarantee fees;

23 (3) the total costs incurred by the enterprises  
24 for providing guarantees;

1           (4) the average guarantee fee charged by the  
2 enterprises;

3           (5) an analysis of how and why the guarantee  
4 fees charged differ from such fees charged during  
5 the previous year;

6           (6) a breakdown of the revenue and costs asso-  
7 ciated with providing guarantees, based on product  
8 type and risk classifications; and

9           (7) other relevant information on guarantee  
10 fees with other participants in the mortgage and  
11 securitization business.

12       (d) PROTECTION OF INFORMATION.—Nothing in this  
13 section may be construed to require or authorize the Di-  
14 rector of the Federal Housing Finance Agency, in connec-  
15 tion with the study mandated by this section, to disclose  
16 information of the enterprises or other organization that  
17 is confidential or proprietary.

18       (e) EFFECTIVE DATE.—This section shall take effect  
19 on the date of the enactment of this Act.

20 **SEC. 120. CONFORMING AMENDMENTS.**

21       (a) 1992 ACT.—Part 1 of subtitle A of title XIII of  
22 the Housing and Community Development Act of 1992  
23 (12 U.S.C. 4511 et seq.), as amended by the preceding  
24 provisions of this Act, is further amended—

1           (1) by striking “an enterprise” each place such  
2       term appears in such part (except in sections  
3       1313(a)(2)(A),       1313A(b)(2)(B)(ii)(I),       and  
4       1316(b)(3)) and inserting “a regulated entity”;

5           (2) by striking “the enterprise” each place such  
6       term appears in such part (except in section  
7       1316(b)(3)) and inserting “the regulated entity”;

8           (3) by striking “the enterprises” each place  
9       such term appears in such part (except in sections  
10      1312(c)(2), and 1312(e)(2)) and inserting “the reg-  
11      ulated entities”;

12          (4) by striking “each enterprise” each place  
13      such term appears in such part and inserting “each  
14      regulated entity”;

15          (5) by striking “Office” each place such term  
16      appears in such part (except in sections 1311(b)(2),  
17      1312(b)(5), 1315(b), and 1316(a)(4), (g), and (h),  
18      1317(c), and 1319A(a)) and inserting “Agency”;

19          (6) in section 1315 (12 U.S.C. 4515)—

20              (A) in subsection (a)—

21                  (i) in the subsection heading, by strik-  
22              ing “OFFICE PERSONNEL” and inserting  
23              “IN GENERAL”; and

1 (ii) by striking “The” and inserting  
 2 “Subject to title III of the Federal Hous-  
 3 ing Finance Reform Act of 2007, the”;

4 (B) by striking subsections (d) and (f);  
 5 and

6 (C) by redesignating subsection (e) as sub-  
 7 section (d);

8 (7) in section 1319B (12 U.S.C. 4521), by  
 9 striking “Committee on Banking, Finance and  
 10 Urban Affairs” each place such term appears and  
 11 inserting “Committee on Financial Services”; and

12 (8) in section 1319F (12 U.S.C. 4525), striking  
 13 all that follows “United States Code” and inserting  
 14 “, the Agency shall be considered an agency respon-  
 15 sible for the regulation or supervision of financial in-  
 16 stitutions.”.

17 (b) AMENDMENTS TO FANNIE MAE CHARTER ACT.—  
 18 The Federal National Mortgage Association Charter Act  
 19 (12 U.S.C. 1716 et seq.) is amended—

20 (1) by striking “Director of the Office of Fed-  
 21 eral Housing Enterprise Oversight of the Depart-  
 22 ment of Housing and Urban Development” each  
 23 place such term appears, and inserting “Director of  
 24 the Federal Housing Finance Agency”, in—

1 (A) section 303(c)(2) (12 U.S.C.  
2 1718(c)(2));

3 (B) section 309(d)(3)(B) (12 U.S.C.  
4 1723a(d)(3)(B)); and

5 (C) section 309(k)(1); and  
6 (2) in section 309—

7 (A) in subsections (d)(3)(A) and (n)(1), by  
8 striking “Banking, Finance and Urban Affairs”  
9 each place such term appears and inserting  
10 “Financial Services”; and

11 (B) in subsection (m)—

12 (i) in paragraph (1), by striking “Sec-  
13 retary” the second place such term ap-  
14 pears and inserting “Director”;

15 (ii) in paragraph (2), by striking  
16 “Secretary” the second place such term  
17 appears and inserting “Director”; and

18 (iii) by striking “Secretary” each  
19 other place such term appears and insert-  
20 ing “Director of the Federal Housing Fi-  
21 nance Agency”; and

22 (C) in subsection (n), by striking “Sec-  
23 retary” each place such term appears and in-  
24 serting “Director of the Federal Housing Fi-  
25 nance Agency”.

1 (c) AMENDMENTS TO FREDDIE MAC ACT.—The Fed-  
 2 eral Home Loan Mortgage Corporation Act is amended—

3 (1) by striking “Director of the Office of Fed-  
 4 eral Housing Enterprise Oversight of the Depart-  
 5 ment of Housing and Urban Development” each  
 6 place such term appears, and inserting “Director of  
 7 the Federal Housing Finance Agency”, in—

8 (A) section 303(b)(2) (12 U.S.C.  
 9 1452(b)(2));

10 (B) section 303(h)(2) (12 U.S.C.  
 11 1452(h)(2)); and

12 (C) section 307(c)(1) (12 U.S.C.  
 13 1456(c)(1));

14 (2) in sections 303(h)(1) and 307(f)(1) (12  
 15 U.S.C. 1452(h)(1), 1456(f)(1)), by striking “Bank-  
 16 ing, Finance and Urban Affairs” each place such  
 17 term appears and inserting “Financial Services”;

18 (3) in section 306(i) (12 U.S.C. 1455(i))—

19 (A) by striking “1316(c)” and inserting  
 20 “306(c)”; and

21 (B) by striking “section 106” and insert-  
 22 ing “section 1316”; and

23 (4) in section 307 (12 U.S.C. 1456)—

24 (A) in subsection (e)—

(i) in paragraph (1), by striking “Secretary” the second place such term appears and inserting “Director”;

(ii) in paragraph (2), by striking “Secretary” the second place such term appears and inserting “Director”; and

(iii) by striking “Secretary” each other place such term appears and inserting “Director of the Federal Housing Finance Agency”; and

(B) in subsection (f), by striking “Secretary” each place such term appears and inserting “Director of the Federal Housing Finance Agency”.

## **Subtitle B—Improvement of Mission Supervision**

### **SEC. 131. TRANSFER OF PRODUCT APPROVAL AND HOUSING GOAL OVERSIGHT.**

Part 2 of subtitle A of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4541 et seq.) is amended—

(1) by striking the designation and heading for the part and inserting the following:

1 **“PART 2—PRODUCT APPROVAL BY DIRECTOR,**  
 2 **CORPORATE GOVERNANCE, AND ESTABLISH-**  
 3 **MENT OF HOUSING GOALS”;**

4 and

5 (2) by striking sections 1321 and 1322.

6 **SEC. 132. REVIEW OF ENTERPRISE PRODUCTS.**

7 (a) IN GENERAL.—Part 2 of subtitle A of title XIII  
 8 of the Housing and Community Development Act of 1992  
 9 is amended by inserting before section 1323 (12 U.S.C.  
 10 4543) the following new section:

11 **“SEC. 1321. PRIOR APPROVAL AUTHORITY FOR PRODUCTS**  
 12 **OF ENTERPRISES.**

13 “(a) IN GENERAL.—The Director shall require each  
 14 enterprise to obtain the approval of the Director for any  
 15 product of the enterprise before initially offering the prod-  
 16 uct.

17 “(b) STANDARD FOR APPROVAL.—In considering any  
 18 request for approval of a product pursuant to subsection  
 19 (a), the Director shall make a determination that—

20 “(1) in the case of a product of the Federal Na-  
 21 tional Mortgage Association, the Director determines  
 22 that the product is authorized under paragraph (2),  
 23 (3), (4), or (5) of section 302(b) or section 304 of  
 24 the Federal National Mortgage Association Charter  
 25 Act, (12 U.S.C. 1717(b), 1719);



1           “(2) in the case of a product of the Federal  
2           Home Loan Mortgage Corporation, the Director de-  
3           termines that the product is authorized under para-  
4           graph (1), (4), or (5) of section 305(a) of the Fed-  
5           eral Home Loan Mortgage Corporation Act (12  
6           U.S.C. 1454(a));

7           “(3) the product is in the public interest;

8           “(4) the product is consistent with the safety  
9           and soundness of the enterprise or the mortgage fi-  
10          nance system; and

11          “(5) the product does not materially impair the  
12          efficiency of the mortgage finance system.

13          “(c) PROCEDURE FOR APPROVAL.—

14               “(1) SUBMISSION OF REQUEST.—An enterprise  
15               shall submit to the Director a written request for  
16               approval of a product that describes the product in  
17               such form as prescribed by order or regulation of the  
18               Director.

19               “(2) REQUEST FOR PUBLIC COMMENT.—Imme-  
20               diately upon receipt of a request for approval of a  
21               product, as required under paragraph (1), the Direc-  
22               tor shall publish notice of such request and of the  
23               period for public comment pursuant to paragraph  
24               (3) regarding the product, and a description of the  
25               product proposed by the request. The Director shall

1 give interested parties the opportunity to respond in  
2 writing to the proposed product.

3 “(3) PUBLIC COMMENT PERIOD.—During the  
4 30-day period beginning on the date of publication  
5 pursuant to paragraph (2) of a request for approval  
6 of a product, the Director shall receive public com-  
7 ments regarding the proposed product.

8 “(4) OFFERING OF PRODUCT.—

9 “(A) IN GENERAL.—Not later than 30  
10 days after the close of the public comment pe-  
11 riod described in paragraph (3), the Director  
12 shall approve or deny the product, specifying  
13 the grounds for such decision in writing.

14 “(B) FAILURE TO ACT.—If the Director  
15 fails to act within the 30-day period described  
16 in subparagraph (A), the enterprise may offer  
17 the product.

18 “(d) EXPEDITED REVIEW.—

19 “(1) DETERMINATION AND NOTICE.—If an en-  
20 terprise determines that any new activity, service,  
21 undertaking, or offering is not a product, as defined  
22 in subsection (f), the enterprise shall provide written  
23 notice to the Director prior to the commencement of  
24 such activity, service, undertaking, or offering.

1           “(2) DIRECTOR DETERMINATION OF APPLICA-  
2           BLE PROCEDURE.—Immediately upon receipt of any  
3           notice pursuant to paragraph (1), the Director shall  
4           make a determination under paragraph (3).

5           “(3) DETERMINATION AND TREATMENT AS  
6           PRODUCT.—If the Director determines that any new  
7           activity, service, undertaking, or offering consists of,  
8           relates to, or involves a product—

9                   “(A) the Director shall notify the enter-  
10                  prise of the determination;

11                   “(B) the new activity, service, undertaking,  
12                  or offering described in the notice under para-  
13                  graph (1) shall be considered a product for pur-  
14                  poses of this section; and

15                   “(C) the enterprise shall withdraw its re-  
16                  quest or submit a written request for approval  
17                  of the product pursuant to subsection (c).

18           “(e) CONDITIONAL APPROVAL.—The Director may  
19           conditionally approve the offering of any product by an  
20           enterprise, and may establish terms, conditions, or limita-  
21           tions with respect to such product with which the enter-  
22           prise must comply in order to offer such product.

23           “(f) DEFINITION OF PRODUCT.—For purposes of  
24           this section, the term ‘product’ does not include—

1           “(1) the automated loan underwriting system of  
2           an enterprise in existence as of the date of the en-  
3           actment of the Federal Housing Finance Reform  
4           Act of 2007, including any upgrade to the tech-  
5           nology, operating system, or software to operate the  
6           underwriting system; or

7           “(2) any modification to the mortgage terms  
8           and conditions or mortgage underwriting criteria re-  
9           lating to the mortgages that are purchased or guar-  
10          anteed by an enterprise: *Provided*, That such modi-  
11          fications do not alter the underlying transaction so  
12          as to include services or financing, other than resi-  
13          dential mortgage financing, or create significant new  
14          exposure to risk for the enterprise or the holder of  
15          the mortgage.

16          “(g) NO LIMITATION.—Nothing in this section shall  
17          be deemed to restrict—

18               “(1) the safety and soundness authority of the  
19               Director over all new and existing products or activi-  
20               ties; or

21               “(2) the authority of the Director to review all  
22               new and existing products or activities to determine  
23               that such products or activities are consistent with  
24               the statutory mission of the enterprise.”.

25          (b) CONFORMING AMENDMENTS.—

1           (1) FANNIE MAE.—Section 302(b)(6) of the  
2       Federal National Mortgage Association Charter Act  
3       (12 U.S.C. 1717(b)(6)) is amended—

4           (A) by striking “implement any new pro-  
5       gram” and inserting “initially offer any prod-  
6       uct”;

7           (B) by striking “section 1303” and insert-  
8       ing “section 1321(f)”; and

9           (C) by striking “before obtaining the ap-  
10      proval of the Secretary under section 1322”  
11      and inserting “except in accordance with sec-  
12      tion 1321”.

13          (2) FREDDIE MAC.—Section 305(c) of the Fed-  
14      eral Home Loan Mortgage Corporation Act (12  
15      U.S.C. 1454(c)) is amended—

16          (A) by striking “implement any new pro-  
17      gram” and inserting “initially offer any prod-  
18      uct”;

19          (B) by striking “section 1303” and insert-  
20      ing “section 1321(f)”; and

21          (C) by striking “before obtaining the ap-  
22      proval of the Secretary under section 1322”  
23      and inserting “except in accordance with sec-  
24      tion 1321”.

1           (3) 1992 ACT.—Section 1303 of the Housing  
2           and Community Development Act of 1992 (12  
3           U.S.C. 4502), as amended by section 2 of this Act,  
4           is further amended—

5                   (A) by striking paragraph (17) (relating to  
6           the definition of “new program”); and

7                   (B) by redesignating paragraphs (18)  
8           through (23) as paragraphs (17) through (22),  
9           respectively.

10 **SEC. 133. CONFORMING LOAN LIMITS.**

11           (a) FANNIE MAE.—

12                   (1) GENERAL LIMIT.—Section 302(b)(2) of the  
13           Federal National Mortgage Association Charter Act  
14           (12 U.S.C. 1717(b)(2)) is amended—

15                   (A) in the 4th sentence, by striking “the  
16           Resolution Trust Corporation,”; and

17                   (B) by striking the 7th and 8th sentences  
18           and inserting the following new sentences: “For  
19           2007, such limitations shall not exceed  
20           \$417,000 for a mortgage secured by a single-  
21           family residence, \$533,850 for a mortgage se-  
22           cured by a 2-family residence, \$645,300 for a  
23           mortgage secured by a 3-family residence, and  
24           \$801,950 for a mortgage secured by a 4-family  
25           residence, except that such maximum limita-

1           tions shall be adjusted effective January 1 of  
2           each year beginning with 2008, subject to the  
3           limitations in this paragraph. Each adjustment  
4           shall be made by adding to or subtracting from  
5           each such amount (as it may have been pre-  
6           viously adjusted) a percentage thereof equal to  
7           the percentage increase or decrease, during the  
8           most recent 12-month or four-quarter period  
9           ending before the time of determining such an-  
10          nual adjustment, in the housing price index  
11          maintained by the Director of the Federal  
12          Housing Finance Agency (pursuant to section  
13          1322 of the Housing and Community Develop-  
14          ment Act of 1992 (12 U.S.C. 4541)).”.

15          (2) HIGH-COST AREA LIMIT.—Section 302(b)(2)  
16          of the Federal National Mortgage Association Char-  
17          ter Act is (12 U.S.C. 1717(b)(2)) is amended by  
18          adding after the period at the end the following:  
19          “Such foregoing limitations shall also be increased  
20          with respect to properties of a particular size located  
21          in any area for which the median price for such size  
22          residence exceeds the foregoing limitation for such  
23          size residence, to the lesser of 150 percent of such  
24          foregoing limitation for such size residence or the  
25          amount that is equal to the median price in such

1 area for such size residence, except that, subject to  
2 the order, if any, issued by the Director of the Fed-  
3 eral Housing Finance Agency pursuant to section  
4 133(d)(3) of the Federal Housing Finance Reform  
5 Act of 2007, such increase shall apply only with re-  
6 spect to mortgages on which are based securities  
7 issued and sold by the corporation.”.

8 (b) FREDDIE MAC.—

9 (1) GENERAL LIMIT.—Section 305(a)(2) of the  
10 Federal Home Loan Mortgage Corporation Act (12  
11 U.S.C. 1454(a)(2)) is amended—

12 (A) in the 3rd sentence, by striking “the  
13 Resolution Trust Corporation,”; and

14 (B) by striking the 6th and 7th sentences  
15 and inserting the following new sentences: “For  
16 2007, such limitations shall not exceed  
17 \$417,000 for a mortgage secured by a single-  
18 family residence, \$533,850 for a mortgage se-  
19 cured by a 2-family residence, \$645,300 for a  
20 mortgage secured by a 3-family residence, and  
21 \$801,950 for a mortgage secured by a 4-family  
22 residence, except that such maximum limita-  
23 tions shall be adjusted effective January 1 of  
24 each year beginning with 2008, subject to the  
25 limitations in this paragraph. Each adjustment



1 shall be made by adding to or subtracting from  
2 each such amount (as it may have been pre-  
3 viously adjusted) a percentage thereof equal to  
4 the percentage increase or decrease, during the  
5 most recent 12-month or four-quarter period  
6 ending before the time of determining such an-  
7 nual adjustment, in the housing price index  
8 maintained by the Director of the Federal  
9 Housing Finance Agency (pursuant to section  
10 1322 of the Housing and Community Develop-  
11 ment Act of 1992 (12 U.S.C. 4541)).”

12 (2) HIGH-COST AREA LIMIT.—Section 305(a)(2)  
13 of the Federal Home Loan Mortgage Corporation  
14 Act is amended by adding after the period at the  
15 end the following: “Such foregoing limitations shall  
16 also be increased with respect to properties of a par-  
17 ticular size located in any area for which the median  
18 price for such size residence exceeds the foregoing  
19 limitation for such size residence, to the lesser of  
20 150 percent of such foregoing limitation for such  
21 size residence or the amount that is equal to the me-  
22 dian price in such area for such size residence, ex-  
23 cept that, subject to the order, if any, issued by the  
24 Director of the Federal Housing Finance Agency  
25 pursuant to section 133(d)(3) of the Federal Hous-

1        ing Finance Reform Act of 2007, such increase shall  
2        apply only with respect to mortgages on which are  
3        based securities issued and sold by the Corpora-  
4        tion.”.

5        (c) HOUSING PRICE INDEX.—Subpart A of part 2 of  
6        subtitle A of title XIII of the Housing and Community  
7        Development Act of 1992 (as amended by the preceding  
8        provisions of this Act) is amended by inserting after sec-  
9        tion 1321 (as added by section 132 of this Act) the fol-  
10       lowing new section:

11       **“SEC. 1322. HOUSING PRICE INDEX.**

12       “(a) IN GENERAL.—The Director shall establish and  
13       maintain a method of assessing the national average 1-  
14       family house price for use for adjusting the conforming  
15       loan limitations of the enterprises. In establishing such  
16       method, the Director shall take into consideration the  
17       monthly survey of all major lenders conducted by the Fed-  
18       eral Housing Finance Agency to determine the national  
19       average 1-family house price, the House Price Index main-  
20       tained by the Office of Federal Housing Enterprise Over-  
21       sight of the Department of Housing and Urban Develop-  
22       ment before the effective date under section 185 of the  
23       Federal Housing Finance Reform Act of 2007, any appro-  
24       priate house price indexes of the Bureau of the Census

1 of the Department of Commerce, and any other indexes  
2 or measures that the Director considers appropriate.

3 “(b) GAO AUDIT.—

4 “(1) IN GENERAL.—At such times as are re-  
5 quired under paragraph (2), the Comptroller Gen-  
6 eral of the United States shall conduct an audit of  
7 the methodology established by the Director under  
8 subsection (a) to determine whether the methodology  
9 established is an accurate and appropriate means of  
10 measuring changes to the national average 1-family  
11 house price.

12 “(2) TIMING.—An audit referred to in para-  
13 graph (1) shall be conducted and completed not later  
14 than the expiration of the 180-day period that be-  
15 gins upon each of the following dates:

16 “(A) ESTABLISHMENT.—The date upon  
17 which such methodology is initially established  
18 under subsection (a) in final form by the Direc-  
19 tor.

20 “(B) MODIFICATION OR AMENDMENT.—  
21 Each date upon which any modification or  
22 amendment to such methodology is adopted in  
23 final form by the Director.

24 “(3) REPORT.—Within 30 days of the comple-  
25 tion of any audit conducted under this subsection,

1 the Comptroller General shall submit a report detail-  
2 ing the results and conclusions of the audit to the  
3 Director, the Committee on Financial Services of the  
4 House of Representatives, and the Committee on  
5 Banking, Housing, and Urban Affairs of the Sen-  
6 ate.”.

7 (d) CONDITIONS ON CONFORMING LOAN LIMIT FOR  
8 HIGH-COST AREAS.—

9 (1) STUDY.—The Director of the Federal  
10 Housing Finance Agency shall conduct a study  
11 under this subsection during the six-month period  
12 beginning on the effective date under section 185 of  
13 this Act.

14 (2) ISSUES.—The study under this subsection  
15 shall determine—

16 (A) the effect that restricting the con-  
17 forming loan limits for high-cost areas only to  
18 mortgages on which are based securities issued  
19 and sold by the Federal National Mortgage As-  
20 sociation and the Federal Home Loan Mortgage  
21 Corporation (as provided in the last sentence of  
22 section 302(b)(2) of the Federal National Mort-  
23 gage Association Charter Act and the last sen-  
24 tence of section 305(a)(2) of the Federal Home  
25 Loan Mortgage Corporation Act, pursuant to

1 the amendments made by subsections (a)(2)  
2 and (b)(2) of this section) would have on the  
3 cost to borrowers for mortgages on housing in  
4 such high-cost areas;

5 (B) the effects that such restrictions would  
6 have on the availability of mortgages for hous-  
7 ing in such high-cost areas; and

8 (C) the extent to which the Federal Na-  
9 tional Mortgage Association and the Federal  
10 Home Loan Mortgage Corporation will be able  
11 to issue and sell securities based on mortgages  
12 for housing located in such high-cost areas.

13 (3) DETERMINATION.—

14 (A) IN GENERAL.—Not later than the ex-  
15 piration of the six-month period specified in  
16 paragraph (1), the Director of the Federal  
17 Housing Finance Agency shall make a deter-  
18 mination, based on the results of the study  
19 under this subsection, of whether the restriction  
20 of conforming loan limits for high-cost areas  
21 only to mortgages on which are based securities  
22 issued and sold by the Federal National Mort-  
23 gage Association and the Federal Home Loan  
24 Mortgage Corporation (as provided in the  
25 amendments made by subsections (a)(2) and

1 (b)(2) of this section) will result in an increase  
2 in the cost to borrowers for mortgages on hous-  
3 ing in such high-cost areas.

4 (B) ORDER.—If such determination is that  
5 costs to borrowers on housing in such high-cost  
6 areas will be increased by such restrictions, the  
7 Director may issue an order terminating such  
8 restrictions, in whole or in part.

9 (4) PUBLICATION.—Not later than the expira-  
10 tion of the six-month period specified in paragraph  
11 (1), the Director of the Federal Housing Finance  
12 Agency shall cause to be published in the Federal  
13 Register—

14 (A) a report that—

15 (i) describes the study under this sub-  
16 section; and

17 (ii) sets forth the conclusions of the  
18 study regarding the issues to be deter-  
19 mined under paragraph (2); and

20 (B) notice of the determination of the Di-  
21 rector under paragraph (3); and

22 (C) the order of the Director under para-  
23 graph (3).

24 (5) DEFINITION.—For purposes of this sub-  
25 section, the term “conforming loan limits for high-

1 cost areas” means the dollar amount limitations ap-  
 2 plicable under the section 302(b)(2) of the Federal  
 3 National Mortgage Association Charter Act and sec-  
 4 tion 305(a)(2) of the Federal Home Loan Mortgage  
 5 Corporation Act (as amended by subsections (a) and  
 6 (b) of this section) for areas described in the last  
 7 sentence of such sections (as so amended).

8 **SEC. 134. ANNUAL HOUSING REPORT REGARDING REGU-**  
 9 **LATED ENTITIES.**

10 (a) IN GENERAL.—The Housing and Community De-  
 11 velopment Act of 1992 is amended by striking section  
 12 1324 (12 U.S.C. 4544) and inserting the following new  
 13 section:

14 **“SEC. 1324. ANNUAL HOUSING REPORT REGARDING REGU-**  
 15 **LATED ENTITIES.**

16 “(a) IN GENERAL.—After reviewing and analyzing  
 17 the reports submitted under section 309(n) of the Federal  
 18 National Mortgage Association Charter Act, section  
 19 307(f) of the Federal Home Loan Mortgage Corporation  
 20 Act, and section 10(j)(11) of the Federal Home Loan  
 21 Bank Act (12 U.S.C. 1430(j)(11)), the Director shall sub-  
 22 mit a report, not later than October 30 of each year, to  
 23 the Committee on Financial Services of the House of Rep-  
 24 resentatives and the Committee on Banking, Housing, and

1 Urban Affairs of the Senate, on the activities of each regu-  
2 lated entity.

3 “(b) CONTENTS.—The report shall—

4 “(1) discuss the extent to which—

5 “(A) each enterprise is achieving the an-  
6 nual housing goals established under subpart B  
7 of this part;

8 “(B) each enterprise is complying with sec-  
9 tion 1337;

10 “(C) each Federal home loan bank is com-  
11 plying with section 10(j) of the Federal Home  
12 Loan Bank Act; and

13 “(D) each regulated entity is achieving the  
14 purposes of the regulated entity established by  
15 law;

16 “(2) aggregate and analyze relevant data on in-  
17 come to assess the compliance by each enterprise  
18 with the housing goals established under subpart B;

19 “(3) aggregate and analyze data on income,  
20 race, and gender by census tract and other relevant  
21 classifications, and compare such data with larger  
22 demographic, housing, and economic trends;

23 “(4) examine actions that—

24 “(A) each enterprise has undertaken or  
25 could undertake to promote and expand the an-



1 nual goals established under subpart B and the  
2 purposes of the enterprise established by law;  
3 and

4 “(B) each Federal home loan bank has  
5 taken or could undertake to promote and ex-  
6 pand the community investment program and  
7 affordable housing program of the bank estab-  
8 lished under section subsections (i) and (j) of  
9 section 10 of the Federal Home Loan Bank  
10 Act;

11 “(5) examine the primary and secondary multi-  
12 family housing mortgage markets and describe—

13 “(A) the availability and liquidity of mort-  
14 gage credit;

15 “(B) the status of efforts to provide stand-  
16 ard credit terms and underwriting guidelines  
17 for multifamily housing and to securitize such  
18 mortgage products; and

19 “(C) any factors inhibiting such standard-  
20 ization and securitization;

21 “(6) examine actions each regulated entity has  
22 undertaken and could undertake to promote and ex-  
23 pand opportunities for first-time homebuyers, includ-  
24 ing the use of alternative credit scoring;

1           “(7) describe any actions taken under section  
2       1325(5) with respect to originators found to violate  
3       fair lending procedures;

4           “(8) discuss and analyze existing conditions and  
5       trends, including conditions and trends relating to  
6       pricing, in the housing markets and mortgage mar-  
7       kets; and

8           “(9) identify the extent to which each enter-  
9       prise is involved in mortgage purchases and sec-  
10      ondary market activities involving subprime loans  
11      (as identified in accordance with the regulations  
12      issued pursuant to section 134(b) of the Federal  
13      Housing Finance Reform Act of 2007) and compare  
14      the characteristics of subprime loans purchased and  
15      securitized by the enterprises to other loans pur-  
16      chased and securitized by the enterprises.

17       “(c) DATA COLLECTION AND REPORTING.—

18           “(1) IN GENERAL.—To assist the Director in  
19      analyzing the matters described in subsection (b)  
20      and establishing the methodology described in sec-  
21      tion 1322, the Director shall conduct, on a monthly  
22      basis, a survey of mortgage markets in accordance  
23      with this subsection.

1           “(2) DATA POINTS.—Each monthly survey con-  
2           ducted by the Director under paragraph (1) shall  
3           collect data on—

4                   “(A) the characteristics of individual mort-  
5                   gages that are eligible for purchase by the en-  
6                   terprises and the characteristics of individual  
7                   mortgages that are not eligible for purchase by  
8                   the enterprises including, in both cases, infor-  
9                   mation concerning—

10                           “(i) the price of the house that se-  
11                           cures the mortgage;

12                           “(ii) the loan-to-value ratio of the  
13                           mortgage, which shall reflect any sec-  
14                           ondary liens on the relevant property;

15                           “(iii) the terms of the mortgage;

16                           “(iv) the creditworthiness of the bor-  
17                           rower or borrowers; and

18                           “(v) whether the mortgage, in the  
19                           case of a conforming mortgage, was pur-  
20                           chased by an enterprise; and

21                           “(B) such other matters as the Director  
22                           determines to be appropriate.

23           “(3) PUBLIC AVAILABILITY.—The Director  
24           shall make any data collected by the Director in con-  
25           nection with the conduct of a monthly survey avail-

1       able to the public in a timely manner, provided that  
2       the Director may modify the data released to the  
3       public to ensure that the data is not released in an  
4       identifiable form.

5               “(4) DEFINITION.—For purposes of this sub-  
6       section, the term ‘identifiable form’ means any rep-  
7       resentation of information that permits the identity  
8       of a borrower to which the information relates to be  
9       reasonably inferred by either direct or indirect  
10      means.”.

11      (b) STANDARDS FOR SUBPRIME LOANS.—The Direc-  
12     tor shall, not later than one year after the effective date  
13     under section 185, by regulations issued under section  
14     1316G of the Housing and Community Development Act  
15     of 1992, establish standards by which mortgages pur-  
16     chased and mortgages purchased and securitized shall be  
17     characterized as subprime for the purpose of, and only for  
18     the purpose of, complying with the reporting requirement  
19     under section 1324(b)(9) of such Act.

20     **SEC. 135. ANNUAL REPORTS BY REGULATED ENTITIES ON**  
21               **AFFORDABLE HOUSING STOCK.**

22       The Housing and Community Development Act of  
23     1992 is amended by inserting after section 1328 (12  
24     U.S.C. 4548) the following new section:

1   **“SEC. 1329. ANNUAL REPORTS ON AFFORDABLE HOUSING**  
2                   **STOCK.**

3           “(a) IN GENERAL.—To obtain information helpful in  
4   applying the formula under section 1337(c)(2) for the af-  
5   fordable housing program under such section and for  
6   other appropriate uses, the regulated entities shall con-  
7   duct, or provide for the conducting of, a study on an an-  
8   nual basis to determine the levels of affordable housing  
9   inventory, and the changes in such levels, in communities  
10 throughout the United States.

11          “(b) CONTENTS.—The annual study under this sec-  
12 tion shall determine, for the United States, each State,  
13 and each community within each State—

14               “(1) the level of affordable housing inventory,  
15               including affordable rental dwelling units and afford-  
16               able homeownership dwelling units;

17               “(2) any changes to the level of such inventory  
18               during the 12-month period of the study under this  
19               section, including—

20                       “(A) any additions to such inventory,  
21                       disaggregated by the category of such additions  
22                       (including new construction or housing conver-  
23                       sion);

24                       “(B) any subtractions from such inventory,  
25                       disaggregated by the category of such subtrac-

1           tions (including abandonment, demolition, or  
2           upgrade to market-rate housing);

3           “(C) the number of new affordable dwell-  
4           ing units placed in service; and

5           “(D) the number of affordable housing  
6           dwelling units withdrawn from service;

7           “(3) the types of financing used to build any  
8           dwelling units added to such inventory level and the  
9           period during which such units are required to re-  
10          main affordable;

11          “(4) any excess demand for affordable housing,  
12          including the number of households on rental hous-  
13          ing waiting lists and the tenure of the wait on such  
14          lists; and

15          “(5) such other information as the Director  
16          may require.

17          “(c) REPORT.—For each annual study conducted  
18          pursuant to this section, the regulated entities shall sub-  
19          mit to the Congress, and make publicly available, a report  
20          setting forth the findings of the study.

21          “(d) REGULATIONS AND TIMING.—The Director  
22          shall, by regulation, establish requirements for the studies  
23          and reports under this section, including deadlines for the  
24          submission of such annual reports and standards for de-  
25          termining affordable housing.”.

1 **SEC. 136. MORTGAGOR IDENTIFICATION REQUIREMENTS**  
2 **FOR MORTGAGES OF REGULATED ENTITIES.**

3 (a) IN GENERAL.—Subpart A of part 2 of subtitle  
4 A of title XIII of the Housing and Community Develop-  
5 ment Act of 1992 (12 U.S.C. 4541 et seq.), as amended  
6 by the preceding provisions of this Act, is further amended  
7 by adding at the end the following new section:

8 **“SEC. 1330. MORTGAGOR IDENTIFICATION REQUIREMENTS**  
9 **FOR MORTGAGES OF REGULATED ENTITIES.**

10 “(a) LIMITATION.—The Director shall by regulation  
11 establish standards, and shall enforce compliance with  
12 such standards, that—

13 “(1) prohibit the enterprises from the purchase,  
14 service, holding, selling, lending on the security of,  
15 or otherwise dealing with any mortgage on a one- to  
16 four-family residence that will be used as the prin-  
17 cipal residence of the mortgagor that does not meet  
18 the requirements under subsection (b); and

19 “(2) prohibit the Federal home loan banks from  
20 providing any advances to a member for use in fi-  
21 nancing, and from accepting as collateral for any ad-  
22 vance to a member, any mortgage on a one- to four-  
23 family residence that will be used as the principal  
24 residence of the mortgagor that does not meet the  
25 requirements under subsection (b).

1       “(b) IDENTIFICATION REQUIREMENTS.—The re-  
2       quirements under this subsection with respect to a mort-  
3       gage are that the mortgagor have, at the time of settle-  
4       ment on the mortgage, a Social Security account num-  
5       ber.”.

6       (b) FANNIE MAE.—Section 304 of the Federal Na-  
7       tional Mortgage Association Charter Act (12 U.S.C. 1719)  
8       is amended by adding at the end the following new sub-  
9       section:

10       “(g) PROHIBITION REGARDING MORTGAGOR IDENTI-  
11       FICATION REQUIREMENT.—Nothing in this Act may be  
12       construed to authorize the corporation to purchase, serv-  
13       ice, hold, sell, lend on the security of, or otherwise deal  
14       with any mortgage that the corporation is prohibited from  
15       so dealing with under the standards issued under section  
16       1330 of the Housing and Community Development Act  
17       of 1992 by the Director of the Federal Housing Finance  
18       Agency.”.

19       (c) FREDDIE MAC.—Section 305 of the Federal  
20       Home Loan Mortgage Corporation Act (12 U.S.C. 1454)  
21       is amended by adding at the end the following new sub-  
22       section:

23       “(d) PROHIBITION REGARDING MORTGAGOR IDENTI-  
24       FICATION REQUIREMENTS.—Nothing in this Act may be  
25       construed to authorize the Corporation to purchase, serv-



1 ice, hold, sell, lend on the security of, or otherwise deal  
2 with any mortgage that the Corporation is prohibited from  
3 so dealing with under the standards issued under section  
4 1330 of the Housing and Community Development Act  
5 of 1992 by the Director of the Federal Housing Finance  
6 Agency.”.

7 (d) FEDERAL HOME LOAN BANKS.—Section 10(a) of  
8 the Federal Home Loan Bank Act (12 U.S.C. 1430(a))  
9 is amended—

10 (1) by redesignating paragraph (6) as para-  
11 graph (7); and

12 (2) by inserting after paragraph (5) the fol-  
13 lowing new paragraph:

14 “(6) PROHIBITION REGARDING MORTGAGOR  
15 IDENTIFICATION REQUIREMENTS.—Nothing in this  
16 Act may be construed to authorize a Federal Home  
17 Loan Bank to provide any advance to a member for  
18 use in financing, or accept as collateral for an ad-  
19 vance under this section, any mortgage that a Bank  
20 is prohibited from so accepting under the standards  
21 issued under section 1330 of the Housing and Com-  
22 munity Development Act of 1992 by the Director of  
23 the Federal Housing Finance Agency.”.

1 **SEC. 137. REVISION OF HOUSING GOALS.**

2 (a) HOUSING GOALS.—The Housing and Community  
3 Development Act of 1992 is amended by striking sections  
4 1331 through 1334 (12 U.S.C. 4561–4) and inserting the  
5 following new sections:

6 **“SEC. 1331. ESTABLISHMENT OF HOUSING GOALS.**

7 “(a) IN GENERAL.—The Director shall establish, ef-  
8 fective for the first year that begins after the effective date  
9 under section 185 of the Federal Housing Finance Reform  
10 Act of 2007 and each year thereafter, annual housing  
11 goals, with respect to the mortgage purchases by the en-  
12 terprises, as follows:

13 “(1) SINGLE FAMILY HOUSING GOALS.—Three  
14 single-family housing goals under section 1332.

15 “(2) MULTIFAMILY SPECIAL AFFORDABLE  
16 HOUSING GOALS.—A multifamily special affordable  
17 housing goal under section 1333.

18 “(b) ELIMINATING INTEREST RATE DISPARITIES.—

19 “(1) IN GENERAL.—Upon request by the Direc-  
20 tor, an enterprise shall provide to the Director, in a  
21 form determined by the Director, data the Director  
22 may review to determine whether there exist dispari-  
23 ties in interest rates charged on mortgages to bor-  
24 rowers who are minorities as compared with com-  
25 parable mortgages to borrowers of similar credit-  
26 worthiness who are not minorities.

1           “(2) REMEDIAL ACTIONS UPON PRELIMINARY  
2 FINDING.—Upon a preliminary finding by the Direc-  
3 tor that a pattern of disparities in interest rates  
4 with respect to any lender or lenders exists pursuant  
5 to the data provided by an enterprise in paragraph  
6 (1), the Director shall—

7           “(A) refer the preliminary finding to the  
8 appropriate regulatory or enforcement agency  
9 for further review;

10           “(B) require the enterprise to submit addi-  
11 tional data with respect to any lender or lend-  
12 ers, as appropriate and to the extent prac-  
13 ticable, to the Director who shall submit any  
14 such additional data to the regulatory or en-  
15 forcement agency for appropriate action; and

16           “(C) require the enterprise to undertake  
17 remedial actions, as appropriate, pursuant to  
18 section 1325(5) (12 U.S.C. 4545(5)).

19           “(3) ANNUAL REPORT TO CONGRESS.—The Di-  
20 rector shall submit to the Committee on Financial  
21 Services of the House of Representatives and the  
22 Committee on Banking, Housing, and Urban Affairs  
23 of the Senate a report describing the actions taken,  
24 and being taken, by the Director to carry out this  
25 subsection. No such report shall identify any lender

1 or lenders who have not been found to have engaged  
2 in discriminatory lending practices pursuant to a  
3 final adjudication on the record, and after oppor-  
4 tunity for an administrative hearing, in accordance  
5 with subchapter II of chapter 5 of title 5, United  
6 States Code.

7 “(4) PROTECTION OF IDENTITY OF INDIVID-  
8 UALS.—In carrying out this subsection, the Director  
9 shall ensure that no property-related or financial in-  
10 formation that would enable a borrower to be identi-  
11 fied shall be made public.

12 “(c) TIMING.—The Director shall establish an annual  
13 deadline by which the Director shall establish the annual  
14 housing goals under this subpart for each year, taking into  
15 consideration the need for the enterprises to reasonably  
16 and sufficiently plan their operations and activities in ad-  
17 vance, including operations and activities necessary to  
18 meet such annual goals.

19 **“SEC. 1332. SINGLE-FAMILY HOUSING GOALS.**

20 “(a) IN GENERAL.—The Director shall establish an-  
21 nual goals for the purchase by each enterprise of conven-  
22 tional, conforming, single-family, purchase money mort-  
23 gages financing owner-occupied and rental housing for  
24 each of the following categories of families:

25 “(1) Low-income families.

1 “(2) Families that reside in low-income areas.

2 “(3) Very low-income families.

3 “(b) REFINANCE SUBGOAL.—

4 “(1) IN GENERAL.—The Director shall establish  
5 a separate subgoal within each goal under subsection  
6 (a)(1) for the purchase by each enterprise of mort-  
7 gages for low-income families on single family hous-  
8 ing given to pay off or prepay an existing loan se-  
9 cured by the same property. The Director shall, for  
10 each year, determine whether each enterprise has  
11 complied with the subgoal under this subsection in  
12 the same manner provided under this section for de-  
13 termining compliance with the housing goals.

14 “(2) ENFORCEMENT.—For purposes of section  
15 1336, the subgoal established under paragraph (1)  
16 of this subsection shall be considered to be a housing  
17 goal established under this section. Such subgoal  
18 shall not be enforceable under any other provision of  
19 this title (including subpart C of this part) other  
20 than section 1336 or under any provision of the  
21 Federal National Mortgage Association Charter Act  
22 or the Federal Home Loan Mortgage Corporation  
23 Act.

24 “(c) DETERMINATION OF COMPLIANCE.—The Direc-  
25 tor shall determine, for each year that the housing goals

1 under this section are in effect pursuant to section  
2 1331(a), whether each enterprise has complied with the  
3 single-family housing goals established under this section  
4 for such year. An enterprise shall be considered to be in  
5 compliance with such a goal for a year only if, for each  
6 of the types of families described in subsection (a), the  
7 percentage of the number of conventional, conforming,  
8 single-family, owner-occupied or rental, as applicable, pur-  
9 chase money mortgages purchased by each enterprise in  
10 such year that serve such families, meets or exceeds the  
11 target for the year for such type of family that is estab-  
12 lished under subsection (d).

13 “(d) ANNUAL TARGETS.—

14 “(1) IN GENERAL.—Except as provided in para-  
15 graph (2), for each of the types of families described  
16 in subsection (a), the target under this subsection  
17 for a year shall be the average percentage, for the  
18 three years that most recently precede such year and  
19 for which information under the Home Mortgage  
20 Disclosure Act of 1975 is publicly available, of the  
21 number of conventional, conforming, single-family,  
22 owner-occupied or rental, as applicable, purchase  
23 money mortgages originated in such year that serves  
24 such type of family, as determined by the Director

1 using the information obtained and determined pur-  
2 suant to paragraphs (3) and (4).

3 “(2) AUTHORITY TO INCREASE TARGETS.—

4 “(A) IN GENERAL.—The Director may, for  
5 any year, establish by regulation, for any or all  
6 of the types of families described in subsection  
7 (a), percentage targets that are higher than the  
8 percentages for such year determined pursuant  
9 to paragraph (1), to reflect expected changes in  
10 market performance related to such information  
11 under the Home Mortgage Disclosure Act of  
12 1975.

13 “(B) FACTORS.—In establishing any tar-  
14 gets pursuant to subparagraph (A), the Direc-  
15 tor shall consider the following factors:

16 “(i) National housing needs.

17 “(ii) Economic, housing, and demo-  
18 graphic conditions.

19 “(iii) The performance and effort of  
20 the enterprises toward achieving the hous-  
21 ing goals under this section in previous  
22 years.

23 “(iv) The size of the conventional  
24 mortgage market serving each of the types  
25 of families described in subsection (a) rel-

1           ative to the size of the overall conventional  
2           mortgage market.

3           “(v) The ability of the enterprise to  
4           lead the industry in making mortgage  
5           credit available.

6           “(vi) The need to maintain the sound  
7           financial condition of the enterprises.

8           “(3) HMDA INFORMATION.—The Director  
9           shall annually obtain information submitted in com-  
10          pliance with the Home Mortgage Disclosure Act of  
11          1975 regarding conventional, conforming, single-  
12          family, owner-occupied or rental, as applicable, pur-  
13          chase money mortgages originated and purchased  
14          for the previous year.

15          “(4) CONFORMING MORTGAGES.—In deter-  
16          mining whether a mortgage is a conforming mort-  
17          gage for purposes of this paragraph, the Director  
18          shall consider the original principal balance of the  
19          mortgage loan to be the principal balance as re-  
20          ported in the information referred to in paragraph  
21          (3), as rounded to the nearest thousand dollars.

22          “(e) NOTICE OF DETERMINATION AND ENTERPRISE  
23          COMMENT.—

24          “(1) NOTICE.—Within 30 days of making a de-  
25          termination under subsection (c) regarding a compli-



1       ance of an enterprise for a year with a housing goal  
 2       established under this section and before any public  
 3       disclosure thereof, the Director shall provide notice  
 4       of the determination to the enterprise, which shall  
 5       include an analysis and comparison, by the Director,  
 6       of the performance of the enterprise for the year and  
 7       the targets for the year under subsection (d).

8           “(2) COMMENT PERIOD.—The Director shall  
 9       provide each enterprise an opportunity to comment  
 10      on the determination during the 30-day period be-  
 11      ginning upon receipt by the enterprise of the notice.

12      “(f) USE OF BORROWER INCOME.—In monitoring  
 13      the performance of each enterprise pursuant to the hous-  
 14      ing goals under this section and evaluating such perform-  
 15      ance (for purposes of section 1336), the Director shall  
 16      consider a mortgagor’s income to be such income at the  
 17      time of origination of the mortgage.

18      “(g) CONSIDERATION OF UNITS IN SINGLE-FAMILY  
 19      RENTAL HOUSING.—In establishing any goal under this  
 20      subpart, the Director may take into consideration the  
 21      number of housing units financed by any mortgage on sin-  
 22      gle-family rental housing purchased by an enterprise.

23   **“SEC. 1333. MULTIFAMILY SPECIAL AFFORDABLE HOUSING**  
 24       **GOAL.**

25      “(a) ESTABLISHMENT.—

1           “(1) IN GENERAL.—The Director shall estab-  
2       lish, by regulation, an annual goal for the purchase  
3       by each enterprise of each of the following types of  
4       mortgages on multifamily housing:

5           “(A) Mortgages that finance dwelling units  
6       for low-income families.

7           “(B) Mortgages that finance dwelling units  
8       for very low-income families.

9           “(C) Mortgages that finance dwelling units  
10      assisted by the low-income housing tax credit  
11      under section 42 of the Internal Revenue Code  
12      of 1986.

13          “(2) ADDITIONAL REQUIREMENTS FOR SMALL-  
14      ER PROJECTS.—The Director shall establish, within  
15      the goal under this section, additional requirements  
16      for the purchase by each enterprise of mortgages de-  
17      scribed in paragraph (1) for multifamily housing  
18      projects of a smaller or limited size, which may be  
19      based on the number of dwelling units in the project  
20      or the amount of the mortgage, or both, and shall  
21      include multifamily housing projects of such smaller  
22      sizes as are typical among such projects that serve  
23      rural areas.

24          “(3) FACTORS.—In establishing the goal under  
25      this section relating to mortgages on multifamily

1       housing for an enterprise for a year, the Director  
2       shall consider—

3               “(A) national multifamily mortgage credit  
4       needs;

5               “(B) the performance and effort of the en-  
6       terprise in making mortgage credit available for  
7       multifamily housing in previous years;

8               “(C) the size of the multifamily mortgage  
9       market;

10              “(D) the ability of the enterprise to lead  
11       the industry in making mortgage credit avail-  
12       able, especially for underserved markets, such  
13       as for small multifamily projects of 5 to 50  
14       units, multifamily properties in need of rehabili-  
15       tation, and multifamily properties located in  
16       rural areas; and

17              “(E) the need to maintain the sound finan-  
18       cial condition of the enterprise.

19       “(b) UNITS FINANCED BY HOUSING FINANCE AGEN-  
20   CY BONDS.—The Director shall give credit toward the  
21   achievement of the multifamily special affordable housing  
22   goal under this section (for purposes of section 1336) to  
23   dwelling units in multifamily housing that otherwise quali-  
24   fies under such goal and that is financed by tax-exempt

1 or taxable bonds issued by a State or local housing finance  
2 agency, but only if such bonds—

3 “(1) are secured by a guarantee of the enter-  
4 prise; or

5 “(2) are not investment grade and are pur-  
6 chased by the enterprise.

7 “(c) USE OF TENANT INCOME OR RENT.—The Di-  
8 rector shall monitor the performance of each enterprise  
9 in meeting the goals established under this section and  
10 shall evaluate such performance (for purposes of section  
11 1336) based on—

12 “(1) the income of the prospective or actual  
13 tenants of the property, where such data are avail-  
14 able; or

15 “(2) where the data referred to in paragraph  
16 (1) are not available, rent levels affordable to low-  
17 income and very low-income families.

18 A rent level shall be considered to be affordable for pur-  
19 poses of this subsection for an income category referred  
20 to in this subsection if it does not exceed 30 percent of  
21 the maximum income level of such income category, with  
22 appropriate adjustments for unit size as measured by the  
23 number of bedrooms.

24 “(d) DETERMINATION OF COMPLIANCE.—The Direc-  
25 tor shall, for each year that the housing goal under this

1 section is in effect pursuant to section 1331(a), determine  
2 whether each enterprise has complied with such goal and  
3 the additional requirements under subsection (a)(2).

4 **“SEC. 1334. DISCRETIONARY ADJUSTMENT OF HOUSING**  
5 **GOALS.**

6 “(a) **AUTHORITY.**—An enterprise may petition the  
7 Director in writing at any time during a year to reduce  
8 the level of any goal for such year established pursuant  
9 to this subpart.

10 “(b) **STANDARD FOR REDUCTION.**—The Director  
11 may reduce the level for a goal pursuant to such a petition  
12 only if—

13 “(1) market and economic conditions or the fi-  
14 nancial condition of the enterprise require such ac-  
15 tion; or

16 “(2) efforts to meet the goal would result in the  
17 constraint of liquidity, over-investment in certain  
18 market segments, or other consequences contrary to  
19 the intent of this subpart, or section 301(3) of the  
20 Federal National Mortgage Association Charter Act  
21 (12 U.S.C. 1716(3)) or section 301(3) of the Fed-  
22 eral Home Loan Mortgage Corporation Act (12  
23 U.S.C. 1451 note), as applicable.

24 “(c) **DETERMINATION.**—The Director shall make a  
25 determination regarding any proposed reduction within 30

1 days of receipt of the petition regarding the reduction. The  
2 Director may extend such period for a single additional  
3 15-day period, but only if the Director requests additional  
4 information from the enterprise. A denial by the Director  
5 to reduce the level of any goal under this section may be  
6 appealed to the United States District Court for the Dis-  
7 trict of Columbia or the United States district court in  
8 the jurisdiction in which the headquarters of an enterprise  
9 is located.”.

10 (b) CONFORMING AMENDMENTS.—The Housing and  
11 Community Development Act of 1992 is amended—

12 (1) in section 1335(a) (12 U.S.C. 4565(a)), in  
13 the matter preceding paragraph (1), by striking  
14 “low- and moderate-income housing goal” and all  
15 that follows through “section 1334” and inserting  
16 “housing goals established under this subpart”; and  
17 (2) in section 1336(a)(1) (12 U.S.C.  
18 4566(a)(1)), by striking “sections 1332, 1333, and  
19 1334,” and inserting “this subpart”.

20 (c) DEFINITIONS.—Section 1303 of the Housing and  
21 Community Development Act of 1992 (12 U.S.C. 4502),  
22 as amended by the preceding provisions of this Act, is fur-  
23 ther amended—

1           (1) in paragraph (22) (relating to the definition  
2           of “very low-income”), by striking “60 percent” each  
3           place such term appears and inserting “50 percent”;

4           (2) by redesignating paragraphs (19) through  
5           (22) as paragraphs (23) through (26), respectively;

6           (3) by inserting after paragraph (18) the fol-  
7           lowing new paragraph:

8           “(22) RURAL AREA.—The term ‘rural area’ has  
9           the meaning given such term in section 520 of the  
10          Housing Act of 1949 (42 U.S.C. 1490), except that  
11          such term includes micropolitan areas and tribal  
12          trust lands.”.

13          (4) by redesignating paragraphs (13) through  
14          (18) as paragraphs (16) through (21), respectively;

15          (5) by inserting after paragraph (12) the fol-  
16          lowing new paragraph:

17          “(15) LOW-INCOME AREA.—The term ‘low in-  
18          come area’ means a census tract or block numbering  
19          area in which the median income does not exceed 80  
20          percent of the median income for the area in which  
21          such census tract or block numbering area is lo-  
22          cated, and, for the purposes of section 1332(a)(2),  
23          shall include families having incomes not greater  
24          than 100 percent of the area median income who re-  
25          side in minority census tracts.”;

1           (6) by redesignating paragraphs (11) and (12)  
2           as paragraphs (13) and (14), respectively;

3           (7) by inserting after paragraph (10) the fol-  
4           lowing new paragraph:

5           “(12) EXTREMELY LOW-INCOME.—The term  
6           ‘extremely low-income’ means—

7                   “(A) in the case of owner-occupied units,  
8                   income not in excess of 30 percent of the area  
9                   median income; and

10                   “(B) in the case of rental units, income  
11                   not in excess of 30 percent of the area median  
12                   income, with adjustments for smaller and larger  
13                   families, as determined by the Secretary.”;

14           (8) by redesignating paragraphs (7) through  
15           (10) as paragraphs (8) through (11), respectively;  
16           and

17           (9) by inserting after paragraph (6) the fol-  
18           lowing new paragraph:

19           “(7) CONFORMING MORTGAGE.—The term ‘con-  
20           forming mortgage’ means, with respect to an enter-  
21           prise, a conventional mortgage having an original  
22           principal obligation that does not exceed the dollar  
23           limitation, in effect at the time of such origination,  
24           under, as applicable—



1                   “(A) section 302(b)(2) of the Federal Na-  
2                   tional Mortgage Association Charter Act; or

3                   “(B) section 305(a)(2) of the Federal  
4                   Home Loan Mortgage Corporation Act.”.

5 **SEC. 138. DUTY TO SERVE UNDERSERVED MARKETS.**

6           (a) ESTABLISHMENT AND EVALUATION OF PER-  
7 FORMANCE.—Section 1335 of the Housing and Commu-  
8 nity Development Act of 1992 (12 U.S.C. 4565) is amend-  
9 ed—

10                   (1) in the section heading, by inserting “**DUTY**  
11           **TO SERVE UNDERSERVED MARKETS AND**” be-  
12           fore “**OTHER**”;

13                   (2) by striking subsection (b);

14                   (3) in subsection (a)—

15                           (A) in the matter preceding paragraph (1),  
16                   by inserting “and to carry out the duty under  
17                   subsection (a) of this section” before “, each  
18                   enterprise shall”;

19                           (B) in paragraph (3), by inserting “and”  
20                   after the semicolon at the end;

21                           (C) in paragraph (4), by striking “; and”  
22                   and inserting a period;

23                           (D) by striking paragraph (5); and

24                           (E) by redesignating such subsection as  
25                   subsection (b);

1           (4) by inserting before subsection (b) (as so re-  
2           designated by paragraph (3)(E) of this subsection)  
3           the following new subsection:

4           “(a) DUTY TO SERVE UNDERSERVED MARKETS.—

5                 “(1) DUTY.—In accordance with the purpose of  
6           the enterprises under section 301(3) of the Federal  
7           National Mortgage Association Charter Act (12  
8           U.S.C. 1716) and section 301(b)(3) of the Federal  
9           Home Loan Mortgage Corporation Act (12 U.S.C.  
10          1451 note) to undertake activities relating to mort-  
11          gages on housing for very low-, low-, and moderate-  
12          income families involving a reasonable economic re-  
13          turn that may be less than the return earned on  
14          other activities, each enterprise shall have the duty  
15          to increase the liquidity of mortgage investments  
16          and improve the distribution of investment capital  
17          available for mortgage financing for underserved  
18          markets.

19                 “(2) UNDERSERVED MARKETS.—To meet its  
20          duty under paragraph (1), each enterprise shall com-  
21          ply with the following requirements with respect to  
22          the following underserved markets:

23                         “(A) MANUFACTURED HOUSING.—The en-  
24                         terprise shall lead the industry in developing  
25                         loan products and flexible underwriting guide-

1 lines to facilitate a secondary market for mort-  
2 gages on manufactured homes for very low-,  
3 low-, and moderate-income families.

4 “(B) AFFORDABLE HOUSING PRESERVA-  
5 TION.—The enterprise shall lead the industry in  
6 developing loan products and flexible under-  
7 writing guidelines to facilitate a secondary mar-  
8 ket to preserve housing affordable to very low-  
9 , low-, and moderate-income families, including  
10 housing projects subsidized under—

11 “(i) the project-based and tenant-  
12 based rental assistance programs under  
13 section 8 of the United States Housing Act  
14 of 1937;

15 “(ii) the program under section 236  
16 of the National Housing Act;

17 “(iii) the below-market interest rate  
18 mortgage program under section 221(d)(4)  
19 of the National Housing Act;

20 “(iv) the supportive housing for the  
21 elderly program under section 202 of the  
22 Housing Act of 1959;

23 “(v) the supportive housing program  
24 for persons with disabilities under section

1           811 of the Cranston-Gonzalez National Af-  
2           fordable Housing Act;

3           “(vi) the programs under title IV of  
4           the McKinney-Vento Homeless Assistance  
5           Act (42 U.S.C. 11361 et seq.), but only  
6           permanent supportive housing projects  
7           subsidized under such programs; and

8           “(vii) the rural rental housing pro-  
9           gram under section 515 of the Housing  
10          Act of 1949.

11          “(C) RURAL AND OTHER UNDERSERVED  
12          MARKETS.—The enterprise shall lead the indus-  
13          try in developing loan products and flexible un-  
14          derwriting guidelines to facilitate a secondary  
15          market for mortgages on housing for very low-  
16          , low-, and moderate-income families in rural  
17          areas, and for mortgages for housing for any  
18          other underserved market for very low-, low-,  
19          and moderate-income families that the Sec-  
20          retary identifies as lacking adequate credit  
21          through conventional lending sources. Such un-  
22          derserved markets may be identified by bor-  
23          rower type, market segment, or geographic  
24          area.”; and

1           (5) by adding at the end the following new sub-  
2       section:

3       “(c) EVALUATION AND REPORTING OF COMPLI-  
4       ANCE.—

5           “(1) IN GENERAL.—Not later than 6 months  
6       after the effective date under section 185 of the  
7       Federal Housing Finance Reform Act of 2007, the  
8       Director shall establish a manner for evaluating  
9       whether, and the extent to which, the enterprises  
10      have complied with the duty under subsection (a) to  
11      serve underserved markets and for rating the extent  
12      of such compliance. Using such method, the Director  
13      shall, for each year, evaluate such compliance and  
14      rate the performance of each enterprise as to extent  
15      of compliance. The Director shall include such eval-  
16      uation and rating for each enterprise for a year in  
17      the report for that year submitted pursuant to sec-  
18      tion 1319B(a).

19          “(2) SEPARATE EVALUATIONS.—In determining  
20      whether an enterprise has complied with the duty re-  
21      ferred to in paragraph (1), the Director shall sepa-  
22      rately evaluate whether the enterprise has complied  
23      with such duty with respect to each of the under-  
24      served markets identified in subsection (a), taking  
25      into consideration—

1           “(A) the development of loan products and  
2           more flexible underwriting guidelines;

3           “(B) the extent of outreach to qualified  
4           loan sellers in each of such underserved mar-  
5           kets; and

6           “(C) the volume of loans purchased in each  
7           of such underserved markets.

8           “(3) MANUFACTURED HOUSING MARKET.—In  
9           determining whether an enterprise has complied with  
10          the duty under subparagraph (A) of subsection  
11          (a)(2), the Director may consider loans secured by  
12          both real and personal property.”.

13          (b) ENFORCEMENT.—Subsection (a) of section 1336  
14          of the Housing and Community Development Act of 1992  
15          (12 U.S.C. 4566(a)) is amended—

16                (1) in paragraph (1), by inserting “and with  
17                the duty under section 1335(a) of each enterprise  
18                with respect to underserved markets,” before “as  
19                provided in this section”; and

20                (2) by adding at the end of such subsection, as  
21                amended by the preceding provisions of this title, the  
22                following new paragraph:

23                “(4) ENFORCEMENT OF DUTY TO PROVIDE  
24                MORTGAGE CREDIT TO UNDERSERVED MARKETS.—  
25                The duty under section 1335(a) of each enterprise

1 to serve underserved markets (as determined in ac-  
 2 cordance with section 1335(c)) shall be enforceable  
 3 under this section to the same extent and under the  
 4 same provisions that the housing goals established  
 5 under this subpart are enforceable. Such duty shall  
 6 not be enforceable under any other provision of this  
 7 title (including subpart C of this part) other than  
 8 this section or under any provision of the Federal  
 9 National Mortgage Association Charter Act or the  
 10 Federal Home Loan Mortgage Corporation Act.”.

11 **SEC. 139. MONITORING AND ENFORCING COMPLIANCE**  
 12 **WITH HOUSING GOALS.**

13 (a) **ADDITIONAL CREDIT FOR CERTAIN MORT-**  
 14 **GAGES.**—Section 1336(a) of the Housing and Community  
 15 Development Act of 1992 (12 U.S.C. 4566(a)) is amend-  
 16 ed—

17 (1) in paragraph (2), by inserting “, except as  
 18 provided in paragraph (4),” after “which”; and

19 (2) by adding at the end the following new  
 20 paragraph:

21 “(5) **ADDITIONAL CREDIT.**—The Director shall  
 22 assign more than 125 percent credit toward achieve-  
 23 ment, under this section, of the housing goals for  
 24 mortgage purchase activities of the enterprises that

1       comply with the requirements of such goals and sup-  
2       port—

3               “(A) housing that meets energy efficiency  
4               or other environmental standards that are es-  
5               tablished by a Federal, State, or local govern-  
6               mental authority with respect to the geographic  
7               area where the housing is located or are other-  
8               wise widely recognized; or

9               “(B) housing that includes a licensed  
10              childcare center.

11       The availability of additional credit under this para-  
12       graph shall not be used to increase any housing  
13       goal, subgoal, or target established under this sub-  
14       part.”.

15       (b) MONITORING AND ENFORCEMENT.—Section  
16       1336 of the Housing and Community Development Act  
17       of 1992 (12 U.S.C. 4566) is amended—

18               (1) in subsection (b)—

19                       (A) in the subsection heading, by inserting  
20                       “PRELIMINARY” before “DETERMINATION”;

21                       (B) by striking paragraph (1) and insert-  
22                       ing the following new paragraph:

23               “(1) NOTICE.—If the Director preliminarily de-  
24       termines that an enterprise has failed, or that there  
25       is a substantial probability that an enterprise will



1 fail, to meet any housing goal established under this  
2 subpart, the Director shall provide written notice to  
3 the enterprise of such a preliminary determination,  
4 the reasons for such determination, and the informa-  
5 tion on which the Director based the determina-  
6 tion.”;

7 (C) in paragraph (2)—

8 (i) in subparagraph (A), by inserting  
9 “finally” before “determining”;

10 (ii) by striking subparagraphs (B) and  
11 (C) and inserting the following new sub-  
12 paragraph:

13 “(B) EXTENSION OR SHORTENING OF PE-  
14 RIOD.—The Director may—

15 “(i) extend the period under subpara-  
16 graph (A) for good cause for not more  
17 than 30 additional days; and

18 “(ii) shorten the period under sub-  
19 paragraph (A) for good cause.”; and

20 (iii) by redesignating subparagraph  
21 (D) as subparagraph (C); and

22 (D) in paragraph (3)—

23 (i) in subparagraph (A), by striking  
24 “determine” and inserting “issue a final  
25 determination of”;

1 (ii) in subparagraph (B), by inserting  
 2 “final” before “determinations”; and

3 (iii) in subparagraph (C)—

4 (I) by striking “Committee on  
 5 Banking, Finance and Urban Affairs”  
 6 and inserting “Committee on Finan-  
 7 cial Services”; and

8 (II) by inserting “final” before  
 9 “determination” each place such term  
 10 appears; and

11 (2) in subsection (c)—

12 (A) by striking the subsection designation  
 13 and heading and all that follows through the  
 14 end of paragraph (1) and inserting the fol-  
 15 lowing:

16 “(c) CEASE AND DESIST ORDERS, CIVIL MONEY  
 17 PENALTIES, AND REMEDIES INCLUDING HOUSING  
 18 PLANS.—

19 “(1) REQUIREMENT.—If the Director finds,  
 20 pursuant to subsection (b), that there is a substan-  
 21 tial probability that an enterprise will fail, or has ac-  
 22 tually failed, to meet any housing goal under this  
 23 subpart and that the achievement of the housing  
 24 goal was or is feasible, the Director may require that  
 25 the enterprise submit a housing plan under this sub-

1 section. If the Director makes such a finding and  
2 the enterprise refuses to submit such a plan, sub-  
3 mits an unacceptable plan, fails to comply with the  
4 plan or the Director finds that the enterprise has  
5 failed to meet any housing goal under this subpart,  
6 in addition to requiring an enterprise to submit a  
7 housing plan, the Director may issue a cease and de-  
8 sist order in accordance with section 1341, impose  
9 civil money penalties in accordance with section  
10 1345, or order other remedies as set forth in para-  
11 graph (7) of this subsection.”;

12 (B) in paragraph (2)—

13 (i) by striking “CONTENTS.—Each  
14 housing plan” and inserting “HOUSING  
15 PLAN.—If the Director requires a housing  
16 plan under this section, such a plan”; and

17 (ii) in subparagraph (B), by inserting  
18 “and changes in its operations” after “im-  
19 provements”;

20 (C) in paragraph (3)—

21 (i) by inserting “comply with any re-  
22 medial action or” before “submit a housing  
23 plan”; and

24 (ii) by striking “under subsection  
25 (b)(3) that a housing plan is required”;

1 (D) in paragraph (4), by striking the first  
2 two sentences and inserting the following: “The  
3 Director shall review each submission by an en-  
4 terprise, including a housing plan submitted  
5 under this subsection, and not later than 30  
6 days after submission, approve or disapprove  
7 the plan or other action. The Director may ex-  
8 tend the period for approval or disapproval for  
9 a single additional 30-day period if the Director  
10 determines such extension necessary.”; and

11 (E) by adding at the end the following new  
12 paragraph:

13 “(7) ADDITIONAL REMEDIES FOR FAILURE TO  
14 MEET GOALS.—In addition to ordering a housing  
15 plan under this section, issuing cease and desist or-  
16 ders under section 1341, and ordering civil money  
17 penalties under section 1345, the Director may seek  
18 other actions when an enterprise fails to meet a  
19 goal, and exercise appropriate enforcement authority  
20 available to the Director under this Act to prohibit  
21 the enterprise from initially offering any product (as  
22 such term is defined in section 1321(f)) or engaging  
23 in any new activities, services, undertakings, and of-  
24 ferings and to order the enterprise to suspend prod-

1       ucts and activities, services, undertakings, and offer-  
2       ings pending its achievement of the goal.”.

3   **SEC. 140. AFFORDABLE HOUSING FUND.**

4       (a) IN GENERAL.—The Housing and Community De-  
5   velopment Act of 1992 is amended by striking sections  
6   1337 and 1338 (12 U.S.C. 4562 note) and inserting the  
7   following new section:

8   **“SEC. 1337. AFFORDABLE HOUSING FUND.**

9       “(a) ESTABLISHMENT AND PURPOSE.—The Direc-  
10   tor, in consultation with the Secretary of Housing and  
11   Urban Development, shall establish and manage an af-  
12   fordable housing fund in accordance with this section,  
13   which shall be funded with amounts allocated by the enter-  
14   prises under subsection (b). The purpose of the affordable  
15   housing fund shall be to provide formula grants to grant-  
16   ees for use—

17       “(1) to increase homeownership for extremely  
18       low-and very low-income families;

19       “(2) to increase investment in housing in low-  
20       income areas, and areas designated as qualified cen-  
21       sus tracts or an area of chronic economic distress  
22       pursuant to section 143(j) of the Internal Revenue  
23       Code of 1986 (26 U.S.C. 143(j));

1           “(3) to increase and preserve the supply of  
2       rental and owner-occupied housing for extremely  
3       low- and very low-income families;

4           “(4) to increase investment in public infrastruc-  
5       ture development in connection with housing assisted  
6       under this section; and

7           “(5) to leverage investments from other sources  
8       in affordable housing and in public infrastructure  
9       development in connection with housing assisted  
10      under this section.

11      “(b) ALLOCATION OF AMOUNTS BY ENTERPRISES.—

12           “(1) IN GENERAL.—In accordance with regula-  
13       tions issued by the Director under subsection (m)  
14       and subject to paragraph (2) of this subsection and  
15       subsection (i)(5), each enterprise shall allocate to the  
16       affordable housing fund established under subsection  
17       (a), in each of the years 2007 through 2011, an  
18       amount equal to 1.2 basis points for each dollar of  
19       the average total mortgage portfolio of the enter-  
20       prise during the preceding year.

21           “(2) SUSPENSION OF CONTRIBUTIONS.—The  
22       Director shall temporarily suspend the allocation  
23       under paragraph (1) by an enterprise to the afford-  
24       able housing fund upon a finding by the Director  
25       that such allocations—

1           “(A) are contributing, or would contribute,  
2           to the financial instability of the enterprise;

3           “(B) are causing, or would cause, the en-  
4           terprise to be classified as undercapitalized; or

5           “(C) are preventing, or would prevent, the  
6           enterprise from successfully completing a cap-  
7           ital restoration plan under section 1369C.

8           “(3) 5-YEAR SUNSET AND REPORT.—

9           “(A) SUNSET.—The enterprises shall not  
10          be required to make allocations to the afford-  
11          able housing fund in 2012 or in any year there-  
12          after.

13          “(B) REPORT ON PROGRAM CONTINU-  
14          ANCE.—Not later than June 30, 2011, the Di-  
15          rector shall submit to the Committee on Finan-  
16          cial Services of the House of Representatives  
17          and the Committee on Banking, Housing, and  
18          Urban Affairs of the Senate a report making  
19          recommendations on whether the program  
20          under this section, including the requirement  
21          for the enterprises to make allocations to the  
22          affordable housing fund, should be extended  
23          and on any modifications for the program.

24          “(4) PROHIBITION OF PASS-THROUGH OF COST  
25          OF ALLOCATIONS.—The Director shall, by regula-

tion, prohibit each enterprise from redirecting such costs, through increased charges or fees, or decreased premiums, or in any other manner, to the originators of mortgages purchased or securitized by the enterprise.

“(c) AFFORDABLE HOUSING NEEDS FORMULAS.—

“(1) ALLOCATION FOR 2007.—

“(A) ALLOCATION PERCENTAGES FOR LOUISIANA AND MISSISSIPPI.—For purposes of subsection (d)(1)(A), the allocation percentages for 2007 for the grantees under this section for such year shall be as follows:

“(i) The allocation percentage for the Louisiana Housing Finance Agency shall be 75 percent.

“(ii) The allocation percentage for the Mississippi Development Authority shall be 25 percent.

“(B) USE IN DISASTER AREAS.—Affordable housing grant amounts for 2007 shall be used only as provided in subsection (g) only for such eligible activities in areas that were subject to a declaration by the President of a major disaster or emergency under the Robert T. Stafford Disaster Relief and Emergency As-



1           sistance Act (42 U.S.C. 5121 et seq.) in con-  
2           nection with Hurricane Katrina or Rita of  
3           2005.

4           “(2) ALLOCATION FORMULA FOR OTHER  
5           YEARS.—The Secretary of Housing and Urban De-  
6           velopment shall, by regulation, establish a formula to  
7           allocate, among the States (as such term is defined  
8           in section 1303) and federally recognized Indian  
9           tribes, the amounts provided by the enterprises in  
10          each year referred to subsection (b)(1), other than  
11          2007, to the affordable housing fund established  
12          under this section. The formula shall be based on  
13          the following factors, with respect to each State and  
14          tribe:

15               “(A) The ratio of the population of the  
16               State or federally recognized Indian tribe to the  
17               aggregate population of all the States and  
18               tribes.

19               “(B) The percentage of families in the  
20               State or federally recognized Indian tribe that  
21               pay more than 50 percent of their annual in-  
22               come for housing costs.

23               “(C) The percentage of persons in the  
24               State or federally recognized Indian tribe that

1           are members of extremely low- or very low-in-  
2           come families.

3           “(D) The cost of developing or carrying  
4           out rehabilitation of housing in the State or for  
5           the federally recognized Indian tribe.

6           “(E) The percentage of families in the  
7           State or federally recognized Indian tribe that  
8           live in substandard housing.

9           “(F) The percentage of housing stock in  
10          the State or for the federally recognized Indian  
11          tribe that is extremely old housing.

12          “(G) Any other factors that the Secretary  
13          determines to be appropriate.

14          “(3) FAILURE TO ESTABLISH.—If, in any year  
15          referred to in subsection (b)(1), other than 2007,  
16          the regulations establishing the formula required  
17          under paragraph (2) of this subsection have not  
18          been issued by the date that the Director determines  
19          the amounts described in subsection (d)(1) to be  
20          available for affordable housing fund grants in such  
21          year, for purposes of such year any amounts for a  
22          State (as such term is defined in section 1303 of  
23          this Act) that would otherwise be determined under  
24          subsection (d) by applying the formula established  
25          pursuant to paragraph (2) of this subsection shall be

1 determined instead by applying, for such State, the  
 2 percentage that is equal to the percentage of the  
 3 total amounts made available for such year for allo-  
 4 cation under subtitle A of title II of the Cranston-  
 5 Gonzalez National Affordable Housing Act (42  
 6 U.S.C. 12741 et seq.) that are allocated in such  
 7 year, pursuant to such subtitle, to such State (in-  
 8 cluding any insular area or unit of general local gov-  
 9 ernment, as such terms are defined in section 104  
 10 of such Act (42 U.S.C. 12704), that is treated as a  
 11 State under section 1303 of this Act) and to partici-  
 12 pating jurisdictions and other eligible entities within  
 13 such State.

14 “(d) ALLOCATION OF FORMULA AMOUNT;  
 15 GRANTS.—

16 “(1) FORMULA AMOUNT.—For each year re-  
 17 ferred to in subsection (b)(1), the Director shall de-  
 18 termine the formula amount under this section for  
 19 each grantee, which shall be the amount determined  
 20 for such grantee—

21 “(A) for 2007, by applying the allocation  
 22 percentages under subparagraph (A) of sub-  
 23 section (c)(1) to the sum of the total amounts  
 24 allocated by the enterprises to the affordable

1 housing fund for such year, less any amounts  
2 used pursuant to subsection (i)(1); and

3 “(B) for any other year referred to in sub-  
4 section (b)(1) (other than 2007), by applying  
5 the formula established pursuant to paragraph  
6 (2) of subsection (c) to the sum of the total  
7 amounts allocated by the enterprises to the af-  
8 fordable housing fund for such year and any re-  
9 captured amounts available pursuant to sub-  
10 section (i)(4), less any amounts used pursuant  
11 to subsection (i)(1).

12 “(2) NOTICE.—In each year referred to in sub-  
13 section (b)(1), not later than 60 days after the date  
14 that the Director determines the amounts described  
15 in paragraph (1) to be available for affordable hous-  
16 ing fund grants to grantees in such year, the Direc-  
17 tor shall cause to be published in the Federal Reg-  
18 ister a notice that such amounts shall be so avail-  
19 able.

20 “(3) GRANT AMOUNT.—

21 “(A) IN GENERAL.—For each year re-  
22 ferred to in subsection (b)(1), the Director shall  
23 make a grant from amounts in the affordable  
24 housing fund to each grantee in an amount that  
25 is, except as provided in subparagraph (B),

1 equal to the formula amount under this section  
2 for the grantee. A grantee may designate a  
3 State housing finance agency, housing and com-  
4 munity development entity, tribally designated  
5 housing entity (as such term is defined in sec-  
6 tion 4 of the Native American Housing Assist-  
7 ance and Self-Determination Act of 1997 (25  
8 U.S.C. 4103)) or other qualified instrumentality  
9 of the grantee to receive such grant amounts.

10 “(B) REDUCTION FOR FAILURE TO OBTAIN  
11 RETURN OF MISUSED FUNDS.—If in any year a  
12 grantee fails to obtain reimbursement or return  
13 of the full amount required under subsection  
14 (j)(1)(B) to be reimbursed or returned to the  
15 grantee during such year—

16 “(i) except as provided in clause (ii)—

17 “(I) the amount of the grant for  
18 the grantee for the succeeding year,  
19 as determined pursuant to subpara-  
20 graph (A), shall be reduced by the  
21 amount by which such amounts re-  
22 quired to be reimbursed or returned  
23 exceed the amount actually reim-  
24 bursed or returned; and

1                   “(II) the amount of the grant for  
2                   the succeeding year for each other  
3                   grantee whose grant is not reduced  
4                   pursuant to subclause (I) shall be in-  
5                   creased by the amount determined by  
6                   applying the formula established pur-  
7                   suant to subsection (c)(2) to the total  
8                   amount of all reductions for all grant-  
9                   ees for such year pursuant to sub-  
10                  clause (I); or

11                 “(ii) in any case in which such failure  
12                 to obtain reimbursement or return occurs  
13                 during a year immediately preceding a  
14                 year in which grants under this subsection  
15                 will not be made, the grantee shall pay to  
16                 the Director for reallocation among the  
17                 other grantees an amount equal to the  
18                 amount of the reduction for the grantee  
19                 that would otherwise apply under clause  
20                 (i)(I).

21                 “(e) GRANTEE ALLOCATION PLANS.—

22                 “(1) IN GENERAL.—For each year that a grant-  
23                 ee receives affordable housing fund grant amounts,  
24                 the grantee shall establish an allocation plan in ac-  
25                 cordance with this subsection, which shall be a plan

1 for the distribution of such grant amounts of the  
2 grantee for such year that—

3 “(A) is based on priority housing needs, as  
4 determined by the grantee in accordance with  
5 the regulations established under subsection  
6 (m)(2)(C);

7 “(B) complies with subsection (f); and

8 “(C) includes performance goals, bench-  
9 marks, and timetables for the grantee for the  
10 production, preservation, and rehabilitation of  
11 affordable rental and homeownership housing  
12 with such grant amounts that comply with the  
13 requirements established by the Director pursu-  
14 ant to subsection (m)(2)(F).

15 “(2) ESTABLISHMENT.—In establishing an allo-  
16 cation plan, a grantee shall notify the public of the  
17 establishment of the plan, provide an opportunity for  
18 public comments regarding the plan, consider any  
19 public comments received, and make the completed  
20 plan available to the public.

21 “(3) CONTENTS.—An allocation plan of a  
22 grantee shall set forth the requirements for eligible  
23 recipients under subsection (h) to apply to the  
24 grantee to receive assistance from affordable housing

1 fund grant amounts, including a requirement that  
 2 each such application include—

3 “(A) a description of the eligible activities  
 4 to be conducted using such assistance; and

5 “(B) a certification by the eligible recipient  
 6 applying for such assistance that any housing  
 7 units assisted with such assistance will comply  
 8 with the requirements under this section.

9 “(f) SELECTION OF ACTIVITIES FUNDED USING AF-  
 10 FORDABLE HOUSING FUND GRANT AMOUNTS.—Afford-  
 11 able housing fund grant amounts of a grantee may be  
 12 used, or committed for use, only for activities that—

13 “(1) are eligible under subsection (g) for such  
 14 use;

15 “(2) comply with the applicable allocation plan  
 16 under subsection (e) of the grantee; and

17 “(3) are selected for funding by the grantee in  
 18 accordance with the process and criteria for such se-  
 19 lection established pursuant to subsection (m)(2)(C).

20 “(g) ELIGIBLE ACTIVITIES.—Affordable housing  
 21 fund grant amounts of a grantee shall be eligible for use,  
 22 or for commitment for use, only for assistance for—

23 “(1) the production, preservation, and rehabili-  
 24 tation of rental housing, including housing under the  
 25 programs identified in section 1335(a)(2)(B), except



1       that such grant amounts may be used for the benefit  
2       only of extremely low- and very low-income families;

3           “(2) the production, preservation, and rehabili-  
4       tation of housing for homeownership, including such  
5       forms as downpayment assistance, closing cost as-  
6       sistance, and assistance for interest-rate buy-downs,  
7       that—

8           “(A) is available for purchase only for use  
9       as a principal residence by families that qualify  
10      both as—

11           “(i) extremely low- and very-low in-  
12      come families at the times described in  
13      subparagraphs (A) through (C) of section  
14      215(b)(2) of the Cranston-Gonzalez Na-  
15      tional Affordable Housing Act (42 U.S.C.  
16      12745(b)(2)); and

17           “(ii) first-time homebuyers, as such  
18      term is defined in section 104 of the Cran-  
19      ston-Gonzalez National Affordable Housing  
20      Act (42 U.S.C. 12704), except that any  
21      reference in such section to assistance  
22      under title II of such Act shall for pur-  
23      poses of this section be considered to refer  
24      to assistance from affordable housing fund  
25      grant amounts;

1           “(B) has an initial purchase price that  
2           meets the requirements of section 215(b)(1) of  
3           the Cranston-Gonzalez National Affordable  
4           Housing Act;

5           “(C) is subject to the same resale restric-  
6           tions established under section 215(b)(3) of the  
7           Cranston-Gonzalez National Affordable Hous-  
8           ing Act and applicable to the participating ju-  
9           risdiction that is the State in which such hous-  
10          ing is located; and

11          “(D) is made available for purchase only  
12          by, or in the case of assistance under this para-  
13          graph, is made available only to, homebuyers  
14          who have, before purchase—

15               “(i) completed a program of coun-  
16               seling with respect to the responsibilities  
17               and financial management involved in  
18               homeownership that is approved by the Di-  
19               rector; except that the Director may, at  
20               the request of a State, waive the require-  
21               ments of this subparagraph with respect to  
22               a geographic area or areas within the State  
23               if: (I) the travel time or distance involved  
24               in providing counseling with respect to  
25               such area or areas, as otherwise required

1 under this subparagraph, on an in-person  
2 basis is excessive or the cost of such travel  
3 is prohibitive; and (II) the State provides  
4 alternative forms of counseling for such  
5 area or areas, which may include inter-  
6 active telephone counseling, on-line coun-  
7 seling, interactive video counseling, and  
8 interactive home study counseling and a  
9 program of financial literacy and education  
10 to promote an understanding of consumer,  
11 economic, and personal finance issues and  
12 concepts, including saving for retirement,  
13 managing credit, long-term care, and es-  
14 tate planning and education on predatory  
15 lending, identity theft, and financial abuse  
16 schemes relating to homeownership that is  
17 approved by the Director, except that enti-  
18 ties providing such counseling shall not  
19 discriminate against any particular form of  
20 housing; and

21 “(ii) demonstrated, in accordance with  
22 regulations as the Director shall issue set-  
23 ting forth requirements for sufficient evi-  
24 dence, that they are lawfully present in the  
25 United States; and

1           “(3) public infrastructure development activities  
2           in connection with housing activities funded under  
3           paragraph (1) or (2).

4           “(h) ELIGIBLE RECIPIENTS.—Affordable housing  
5           fund grant amounts of a grantee may be provided only  
6           to a recipient that is an organization, agency, or other en-  
7           tity (including a for-profit entity, a nonprofit entity, and  
8           a faith-based organization) that—

9           “(1) has demonstrated experience and capacity  
10          to conduct an eligible activity under (g), as evi-  
11          denced by its ability to—

12               “(A) own, construct or rehabilitate, man-  
13               age, and operate an affordable multifamily rent-  
14               al housing development;

15               “(B) design, construct or rehabilitate, and  
16               market affordable housing for homeownership;

17               “(C) provide forms of assistance, such as  
18               downpayments, closing costs, or interest-rate  
19               buy-downs, for purchasers; or

20               “(D) construct related public infrastruc-  
21               ture development activities in connection with  
22               such housing activities;

23           “(2) demonstrates the ability and financial ca-  
24           pacity to undertake, comply, and manage the eligible  
25           activity;

1           “(3) demonstrates its familiarity with the re-  
2           quirements of any other Federal, State or local  
3           housing program that will be used in conjunction  
4           with such grant amounts to ensure compliance with  
5           all applicable requirements and regulations of such  
6           programs; and

7           “(4) makes such assurances to the grantee as  
8           the Director shall, by regulation, require to ensure  
9           that the recipient will comply with the requirements  
10          of this section during the entire period that begins  
11          upon selection of the recipient to receive such grant  
12          amounts and ending upon the conclusion of all ac-  
13          tivities under subsection (g) that are engaged in by  
14          the recipient and funded with such grant amounts.

15          “(i) LIMITATIONS ON USE.—

16          “(1) REQUIRED AMOUNT FOR REFCORP.—Of  
17          the aggregate amount allocated pursuant to sub-  
18          section (b) in each year to the affordable housing  
19          fund, 25 percent shall be used as provided in section  
20          21B(f)(2)(E) of the Federal Home Loan Bank Act  
21          (12 U.S.C. 1441b(f)(2)(E)).

22          “(2) REQUIRED AMOUNT FOR HOMEOWNERSHIP  
23          ACTIVITIES.—Of the aggregate amount of affordable  
24          housing fund grant amounts provided in each year

1 to a grantee, not less than 10 percent shall be used  
2 for activities under paragraph (2) of subsection (g).

3 “(3) MAXIMUM AMOUNT FOR PUBLIC INFRA-  
4 STRUCTURE DEVELOPMENT ACTIVITIES IN CONNEC-  
5 TION WITH AFFORDABLE HOUSING ACTIVITIES.—Of  
6 the aggregate amount of affordable housing fund  
7 grant amounts provided in each year to a grantee,  
8 not more than 12.5 percent may be used for activi-  
9 ties under paragraph (3) of subsection (g).

10 “(4) DEADLINE FOR COMMITMENT OR USE.—  
11 Any affordable housing fund grant amounts of a  
12 grantee shall be used or committed for use within  
13 two years of the date of that such grant amounts  
14 are made available to the grantee. The Director shall  
15 recapture into the affordable housing fund any such  
16 amounts not so used or committed for use and allo-  
17 cate such amounts under subsection (d)(1) in the  
18 first year after such recapture.

19 “(5) USE OF RETURNS.—The Director shall, by  
20 regulation provide that any return on a loan or other  
21 investment of any affordable housing fund grant  
22 amounts of a grantee shall be treated, for purposes  
23 of availability to and use by the grantee, as afford-  
24 able housing fund grant amounts.

25 “(6) PROHIBITED USES.—The Director shall—

1           “(A) by regulation, set forth prohibited  
2           uses of affordable housing fund grant amounts,  
3           which shall include use for—

4                     “(i) political activities;

5                     “(ii) advocacy;

6                     “(iii) lobbying, whether directly or  
7           through other parties;

8                     “(iv) counseling services;

9                     “(v) travel expenses; and

10                    “(vi) preparing or providing advice on  
11           tax returns;

12           “(B) by regulation, provide that, except as  
13           provided in subparagraph (C), affordable hous-  
14           ing fund grant amounts of a grantee may not  
15           be used for administrative, outreach, or other  
16           costs of—

17                     “(i) the grantee; or

18                     “(ii) any recipient of such grant  
19           amounts; and

20           “(C) by regulation, limit the amount of  
21           any affordable housing fund grant amounts of  
22           the grantee for a year that may be used for ad-  
23           ministrative costs of the grantee of carrying out  
24           the program required under this section to a  
25           percentage of such grant amounts of the grant-

1           ee for such year, which may not exceed 10 per-  
2           cent.

3           “(7) PROHIBITION OF CONSIDERATION OF USE  
4           FOR MEETING HOUSING GOALS OR DUTY TO  
5           SERVE.—In determining compliance with the hous-  
6           ing goals under this subpart and the duty to serve  
7           underserved markets under section 1335, the Direc-  
8           tor may not consider any affordable housing fund  
9           grant amounts used under this section for eligible  
10          activities under subsection (g). The Director shall  
11          give credit toward the achievement of such housing  
12          goals and such duty to serve underserved markets to  
13          purchases by the enterprises of mortgages for hous-  
14          ing that receives funding from affordable housing  
15          fund grant amounts, but only to the extent that  
16          such purchases by the enterprises are funded other  
17          than with such grant amounts.

18          “(8) ACCEPTABLE IDENTIFICATION REQUIRE-  
19          MENT FOR OCCUPANCY OR ASSISTANCE.—

20                 “(A) IN GENERAL.—Any assistance pro-  
21                 vided with any affordable housing grant  
22                 amounts may not be made available to, or on  
23                 behalf of, any individual or household unless the  
24                 individual provides, or, in the case of a house-  
25                 hold, all adult members of the household pro-



1           vide, personal identification in one of the fol-  
2           lowing forms:

3                   “(i) SOCIAL SECURITY CARD WITH  
4                   PHOTO IDENTIFICATION CARD OR REAL ID  
5                   ACT IDENTIFICATION.—

6                   “(I) A social security card ac-  
7                   companyed by a photo identification  
8                   card issued by the Federal Govern-  
9                   ment or a State Government; or

10                   “(II) A driver’s license or identi-  
11                   fication card issued by a State in the  
12                   case of a State that is in compliance  
13                   with title II of the REAL ID Act of  
14                   2005 (title II of division B of Public  
15                   Law 109-13; 49 U.S.C. 30301 note).

16                   “(ii) PASSPORT.—A passport issued  
17                   by the United States or a foreign govern-  
18                   ment.

19                   “(iii) USCIS PHOTO IDENTIFICATION  
20                   CARD.—A photo identification card issued  
21                   by the Secretary of Homeland Security  
22                   (acting through the Director of the United  
23                   States Citizenship and Immigration Serv-  
24                   ices).

1           “(B) REGULATIONS.—The Director shall,  
2           by regulation, require that each grantee and re-  
3           cipient take such actions as the Director con-  
4           siders necessary to ensure compliance with the  
5           requirements of subparagraph (A).

6           “(j) ACCOUNTABILITY OF RECIPIENTS AND GRANT-  
7   EES.—

8           “(1) RECIPIENTS.—

9           “(A) TRACKING OF FUNDS.—The Director  
10          shall—

11               “(i) require each grantee to develop  
12               and maintain a system to ensure that each  
13               recipient of assistance from affordable  
14               housing fund grant amounts of the grantee  
15               uses such amounts in accordance with this  
16               section, the regulations issued under this  
17               section, and any requirements or condi-  
18               tions under which such amounts were pro-  
19               vided; and

20               “(ii) establish minimum requirements  
21               for agreements, between the grantee and  
22               recipients, regarding assistance from the  
23               affordable housing fund grant amounts of  
24               the grantee, which shall include—

1           “(I) appropriate continuing fi-  
2           nancial and project reporting, record  
3           retention, and audit requirements for  
4           the duration of the grant to the re-  
5           cipient to ensure compliance with the  
6           limitations and requirements of this  
7           section and the regulations under this  
8           section; and

9           “(II) any other requirements that  
10          the Director determines are necessary  
11          to ensure appropriate grant adminis-  
12          tration and compliance.

13          “(B) MISUSE OF FUNDS.—

14               “(i)     REIMBURSEMENT     REQUIRE-  
15               MENT.—If any recipient of assistance from  
16               affordable housing fund grant amounts of  
17               a grantee is determined, in accordance  
18               with clause (ii), to have used any such  
19               amounts in a manner that is materially in  
20               violation of this section, the regulations  
21               issued under this section, or any require-  
22               ments or conditions under which such  
23               amounts were provided, the grantee shall  
24               require that, within 12 months after the  
25               determination of such misuse, the recipient

1 shall reimburse the grantee for such mis-  
2 used amounts and return to the grantee  
3 any amounts from the affordable housing  
4 fund grant amounts of the grantee that re-  
5 main unused or uncommitted for use. The  
6 remedies under this clause are in addition  
7 to any other remedies that may be avail-  
8 able under law.

9 “(ii) DETERMINATION.—A determina-  
10 tion is made in accordance with this clause  
11 if the determination is—

12 “(I) made by the Director; or

13 “(II)(aa) made by the grantee;

14 “(bb) the grantee provides notifi-  
15 cation of the determination to the Di-  
16 rector for review, in the discretion of  
17 the Director, of the determination;  
18 and

19 “(cc) the Director does not sub-  
20 sequently reverse the determination.

21 “(2) GRANTEES.—

22 “(A) REPORT.—

23 “(i) IN GENERAL.—The Director shall  
24 require each grantee receiving affordable  
25 housing fund grant amounts for a year to

1 submit a report, for such year, to the Di-  
2 rector that—

3 “(I) describes the activities fund-  
4 ed under this section during such year  
5 with the affordable housing fund  
6 grant amounts of the grantee; and

7 “(II) the manner in which the  
8 grantee complied during such year  
9 with the allocation plan established  
10 pursuant to subsection (e) for the  
11 grantee.

12 “(ii) PUBLIC AVAILABILITY.—The Di-  
13 rector shall make such reports pursuant to  
14 this subparagraph publicly available.

15 “(B) MISUSE OF FUNDS.—If the Director  
16 determines, after reasonable notice and oppor-  
17 tunity for hearing, that a grantee has failed to  
18 comply substantially with any provision of this  
19 section and until the Director is satisfied that  
20 there is no longer any such failure to comply,  
21 the Director shall—

22 “(i) reduce the amount of assistance  
23 under this section to the grantee by an  
24 amount equal to the amount affordable

1           housing fund grant amounts which were  
2           not used in accordance with this section;

3           “(ii) require the grantee to repay the  
4           Director an amount equal to the amount of  
5           the amount affordable housing fund grant  
6           amounts which were not used in accord-  
7           ance with this section;

8           “(iii) limit the availability of assist-  
9           ance under this section to the grantee to  
10          activities or recipients not affected by such  
11          failure to comply; or

12          “(iv) terminate any assistance under  
13          this section to the grantee.

14          “(k) CAPITAL REQUIREMENTS.—The utilization or  
15          commitment of amounts from the affordable housing fund  
16          shall not be subject to the risk-based capital requirements  
17          established pursuant to section 1361(a).

18          “(l) DEFINITIONS.—For purposes of this section, the  
19          following definitions shall apply:

20               “(1) AFFORDABLE HOUSING FUND GRANT  
21          AMOUNTS.—The term ‘affordable housing fund  
22          grant amounts’ means amounts from the affordable  
23          housing fund established under subsection (a) that  
24          are provided to a grantee pursuant to subsection  
25          (d)(3).

1 “(2) GRANTEE.—The term ‘grantee’ means—

2 “(A) with respect to 2007, the Louisiana  
3 Housing Finance Agency and the Mississippi  
4 Development Authority; and

5 “(B) with respect to the years referred to  
6 in subsection (b)(1), other than 2007, each  
7 State (as such term is defined in section 1303)  
8 and each federally recognized Indian tribe.

9 “(3) RECIPIENT.—The term ‘recipient’ means  
10 an entity meeting the requirements under subsection  
11 (h) that receives assistance from a grantee from af-  
12 fordable housing fund grant amounts of the grantee.

13 “(4) TOTAL MORTGAGE PORTFOLIO.—The term  
14 ‘total mortgage portfolio’ means, with respect to a  
15 year, the sum, for all mortgages outstanding during  
16 that year in any form, including whole loans, mort-  
17 gage-backed securities, participation certificates, or  
18 other structured securities backed by mortgages, of  
19 the dollar amount of the unpaid outstanding prin-  
20 cipal balances under such mortgages. Such term in-  
21 cludes all such mortgages or securitized obligations,  
22 whether retained in portfolio, or sold in any form.  
23 The Director is authorized to promulgate rules fur-  
24 ther defining such term as necessary to implement  
25 this section and to address market developments.

1           “(5) VERY-LOW INCOME FAMILY.—The term  
2           ‘very low-income family’ has the meaning given such  
3           term in section 1303, except that such term includes  
4           any family that resides in a rural area that has an  
5           income that does not exceed the poverty line (as  
6           such term is defined in section 673(2) of the Omni-  
7           bus Budget Reconciliation Act of 1981 (42 U.S.C.  
8           9902(2)), including any revision required by such  
9           section) applicable to a family of the size involved.

10          “(m) REGULATIONS.—

11               “(1) IN GENERAL.—The Director, in consulta-  
12           tion with the Secretary of Housing and Urban De-  
13           velopment, shall issue regulations to carry out this  
14           section.

15               “(2) REQUIRED CONTENTS.—The regulations  
16           issued under this subsection shall include—

17                       “(A) a requirement that the Director en-  
18                   sure that the program of each grantee for use  
19                   of affordable housing fund grant amounts of  
20                   the grantee is audited not less than annually to  
21                   ensure compliance with this section;

22                       “(B) authority for the Director to audit,  
23                   provide for an audit, or otherwise verify a  
24                   grantee’s activities, to ensure compliance with  
25                   this section;



“(C) requirements for a process for application to, and selection by, each grantee for activities meeting the grantee’s priority housing needs to be funded with affordable housing fund grant amounts of the grantee, which shall provide for priority in funding to be based upon—

“(i) greatest impact;

“(ii) geographic diversity;

“(iii) ability to obligate amounts and undertake activities so funded in a timely manner;

“(iv) in the case of rental housing projects under subsection (g)(1), the extent to which rents for units in the project funded are affordable, especially for extremely low-income families;

“(v) in the case of rental housing projects under subsection (g)(1), the extent of the duration for which such rents will remain affordable;

“(vi) the extent to which the application makes use of other funding sources; and

1 “(vii) the merits of an applicant’s pro-  
2 posed eligible activity;

3 “(D) requirements to ensure that amounts  
4 provided to a grantee from the affordable hous-  
5 ing fund that are used for rental housing under  
6 subsection (g)(1) are used only for the benefit  
7 of extremely low- and very-low income families;

8 “(E) limitations on public infrastructure  
9 development activities that are eligible pursuant  
10 to subsection (g)(3) for funding with affordable  
11 housing fund grant amounts and requirements  
12 for the connection between such activities and  
13 housing activities funded under paragraph (1)  
14 or (2) of subsection (g); and

15 “(F) requirements and standards for es-  
16 tablishment, by grantees (including the grantees  
17 for 2007 pursuant to subsection (l)(2)(A)), of  
18 performance goals, benchmarks, and timetables  
19 for the production, preservation, and rehabilita-  
20 tion of affordable rental and homeownership  
21 housing with affordable housing fund grant  
22 amounts.

23 “(n) ENFORCEMENT OF REQUIREMENTS ON ENTER-  
24 PRISE.—Compliance by the enterprises with the require-  
25 ments under this section shall be enforceable under sub-

1 part C. Any reference in such subpart to this part or to  
2 an order, rule, or regulation under this part specifically  
3 includes this section and any order, rule, or regulation  
4 under this section.

5 “(o) AFFORDABLE HOUSING TRUST FUND.—If,  
6 after the enactment of this Act, in any year, there is en-  
7 acted any provision of Federal law establishing an afford-  
8 able housing trust fund other than under this title for use  
9 only for grants to provide affordable rental housing and  
10 affordable homeownership opportunities, and the subse-  
11 quent year is a year referred to in subsection (b)(1), the  
12 Director shall in such subsequent year and any remaining  
13 years referred to in subsection (b)(1) transfer to such af-  
14 fordable housing trust fund the aggregate amount allo-  
15 cated pursuant to subsection (b) in such year to the af-  
16 fordable housing fund under this section, less any amounts  
17 used pursuant to subsection (i)(1). For such subsequent  
18 and remaining years, the provisions of subsections (c) and  
19 (d) shall not apply. Notwithstanding any other provision  
20 of law, assistance provided using amounts transferred to  
21 such affordable housing trust fund pursuant to this sub-  
22 section may not be used for any of the activities specified  
23 in clauses (i) through (vi) of subsection (i)(6). Nothing  
24 in this subsection shall be construed to alter the terms

1 and conditions of the affordable housing fund under this  
2 section or to extend the life of such fund.

3 “(p) FUNDING ACCOUNTABILITY AND TRANS-  
4 PARENCY.—Any grant under this section to a grantee  
5 from the affordable housing fund established under sub-  
6 section (a), any assistance provided to a recipient by a  
7 grantee from affordable housing fund grant amounts, and  
8 any grant, award, or other assistance from an affordable  
9 housing trust fund referred to in subsection (o) shall be  
10 considered a Federal award for purposes of the Federal  
11 Funding Accountability and Transparency Act of 2006  
12 (31 U.S.C. 6101 note). Upon the request of the Director  
13 of the Office of Management and Budget, the Director of  
14 the Federal Housing Finance Agency shall obtain and pro-  
15 vide such information regarding any such grants, assist-  
16 ance, and awards as the Director of the Office of Manage-  
17 ment and Budget considers necessary to comply with the  
18 requirements of such Act, as applicable pursuant to the  
19 preceding sentence.”.

20 (b) TIMELY ESTABLISHMENT OF AFFORDABLE  
21 HOUSING NEEDS FORMULA.—

22 (1) IN GENERAL.—The Secretary of Housing  
23 and Urban Development shall, not later than the ef-  
24 fective date under section 185 of this Act, issue the  
25 regulations establishing the affordable housing needs

1 formulas in accordance with the provisions of section  
2 1337(c)(2) of the Housing and Community Develop-  
3 ment Act of 1992, as such section is amended by  
4 subsection (a) of this section.

5 (2) EFFECTIVE DATE.—This subsection shall  
6 take effect on the date of the enactment of this Act.

7 (c) REFCORP PAYMENTS.—Section 21B(f)(2) of  
8 the Federal Home Loan Bank Act (12 U.S.C.  
9 1441b(f)(2)) is amended—

10 (1) in subparagraph (E), by striking “and (D)”  
11 and inserting “(D), and (E)”;

12 (2) by redesignating subparagraph (E) as sub-  
13 paragraph (F); and

14 (3) by inserting after subparagraph (D) the fol-  
15 lowing new subparagraph:

16 “(E) PAYMENTS BY FANNIE MAE AND  
17 FREDDIE MAC.—To the extent that the  
18 amounts available pursuant to subparagraphs  
19 (A), (B), (C), and (D) are insufficient to cover  
20 the amount of interest payments, each enter-  
21 prise (as such term is defined in section 1303  
22 of the Housing and Community Development  
23 Act of 1992 (42 U.S.C. 4502)) shall transfer to  
24 the Funding Corporation in each calendar year  
25 the amounts allocated for use under this sub-

1 paragraph pursuant to section 1337(i)(1) of  
2 such Act.”.

3 (d) GAO REPORT.—The Comptroller General shall  
4 conduct a study to determine the effects that the afford-  
5 able housing fund established under section 1337 of the  
6 Housing and Community Development Act of 1992, as  
7 added by the amendment made by subsection (a) of this  
8 section, will have on the availability and affordability of  
9 credit for homebuyers, including the effects on such credit  
10 of the requirement under such section 1337(b) that the  
11 Federal National Mortgage Association and Federal Home  
12 Loan Mortgage Corporation make allocations of amounts  
13 to such fund based on the average total mortgage port-  
14 folios, and the extent to which the costs of such allocation  
15 requirement will be borne by such entities or will be passed  
16 on to homebuyers. Not later than the expiration of the  
17 12-month period beginning on the date of the enactment  
18 of this Act, the Comptroller General shall submit a report  
19 to the Congress setting forth the results and conclusions  
20 of such study. This subsection shall take effect on the date  
21 of the enactment of this Act.

22 **SEC. 141. CONSISTENCY WITH MISSION.**

23 Subpart B of part 2 of subtitle A of title XIII of the  
24 Housing and Community Development Act of 1992 (12  
25 U.S.C. 4561 et seq.) is amended by adding after section

1 1337, as added by section 139 of this Act, the following  
2 new section:

3 **“SEC. 1338. CONSISTENCY WITH MISSION.**

4 “This subpart may not be construed to authorize an  
5 enterprise to engage in any program or activity that con-  
6 travenes or is inconsistent with the Federal National  
7 Mortgage Association Charter Act or the Federal Home  
8 Loan Mortgage Corporation Act.”.

9 **SEC. 142. ENFORCEMENT.**

10 (a) CEASE-AND-DESIST PROCEEDINGS.—Section  
11 1341 of the Housing and Community Development Act  
12 of 1992 (12 U.S.C. 4581) is amended—

13 (1) by striking subsection (a) and inserting the  
14 following new subsection:

15 “(a) GROUNDS FOR ISSUANCE.—The Director may  
16 issue and serve a notice of charges under this section upon  
17 an enterprise if the Director determines—

18 “(1) the enterprise has failed to meet any hous-  
19 ing goal established under subpart B, following a  
20 written notice and determination of such failure in  
21 accordance with section 1336;

22 “(2) the enterprise has failed to submit a report  
23 under section 1314, following a notice of such fail-  
24 ure, an opportunity for comment by the enterprise,  
25 and a final determination by the Director;

1           “(3) the enterprise has failed to submit the in-  
2           formation required under subsection (m) or (n) of  
3           section 309 of the Federal National Mortgage Asso-  
4           ciation Charter Act, or subsection (e) or (f) of sec-  
5           tion 307 of the Federal Home Loan Mortgage Cor-  
6           poration Act;

7           “(4) the enterprise has violated any provision of  
8           this part or any order, rule or regulation under this  
9           part;

10          “(5) the enterprise has failed to submit a hous-  
11          ing plan that complies with section 1336(c) within  
12          the applicable period; or

13          “(6) the enterprise has failed to comply with a  
14          housing plan under section 1336(c).”;

15          (2) in subsection (b)(2), by striking “requiring  
16          the enterprise to” and all that follows through the  
17          end of the paragraph and inserting the following:  
18          “requiring the enterprise to—

19                  “(A) comply with the goal or goals;

20                  “(B) submit a report under section 1314;

21                  “(C) comply with any provision this part  
22                  or any order, rule or regulation under such  
23                  part;

24                  “(D) submit a housing plan in compliance  
25                  with section 1336(c);



1           “(E) comply with a housing plan submitted  
2           under section 1336(c); or

3           “(F) provide the information required  
4           under subsection (m) or (n) of section 309 of  
5           the Federal National Mortgage Association  
6           Charter Act or subsection (e) or (f) of section  
7           307 of the Federal Home Loan Mortgage Cor-  
8           poration Act, as applicable.”;

9           (3) in subsection (c), by inserting “date of the”  
10          before “service of the order”; and

11          (4) by striking subsection (d).

12          (b) AUTHORITY OF DIRECTOR TO ENFORCE NO-  
13 TICES AND ORDERS.—Section 1344 of the Housing and  
14 Community Development Act of 1992 (12 U.S.C. 4584)  
15 is amended by striking subsection (a) and inserting the  
16 following new subsection:

17          “(a) ENFORCEMENT.—The Director may, in the dis-  
18 cretion of the Director, apply to the United States District  
19 Court for the District of Columbia, or the United States  
20 district court within the jurisdiction of which the head-  
21 quarters of the enterprise is located, for the enforcement  
22 of any effective and outstanding notice or order issued  
23 under section 1341 or 1345, or request that the Attorney  
24 General of the United States bring such an action. Such

1 court shall have jurisdiction and power to order and re-  
2 quire compliance with such notice or order.”.

3 (c) CIVIL MONEY PENALTIES.—Section 1345 of the  
4 Housing and Community Development Act of 1992 (12  
5 U.S.C. 4585) is amended—

6 (1) by striking subsections (a) and (b) and in-  
7 serting the following new subsections:

8 “(a) AUTHORITY.—The Director may impose a civil  
9 money penalty, in accordance with the provisions of this  
10 section, on any enterprise that has failed to—

11 “(1) meet any housing goal established under  
12 subpart B, following a written notice and determina-  
13 tion of such failure in accordance with section  
14 1336(b);

15 “(2) submit a report under section 1314, fol-  
16 lowing a notice of such failure, an opportunity for  
17 comment by the enterprise, and a final determina-  
18 tion by the Director;

19 “(3) submit the information required under  
20 subsection (m) or (n) of section 309 of the Federal  
21 National Mortgage Association Charter Act, or sub-  
22 section (e) or (f) of section 307 of the Federal Home  
23 Loan Mortgage Corporation Act;

24 “(4) comply with any provision of this part or  
25 any order, rule or regulation under this part;

1 “(5) submit a housing plan pursuant to section  
2 1336(c) within the required period; or

3 “(6) comply with a housing plan for the enter-  
4 prise under section 1336(c).

5 “(b) AMOUNT OF PENALTY.—The amount of the  
6 penalty, as determined by the Director, may not exceed—

7 “(1) for any failure described in paragraph (1),  
8 (5), or (6) of subsection (a), \$50,000 for each day  
9 that the failure occurs; and

10 “(2) for any failure described in paragraph (2),  
11 (3), or (4) of subsection (a), \$20,000 for each day  
12 that the failure occurs.”;

13 (2) in subsection (c)—

14 (A) in paragraph (1)—

15 (i) in subparagraph (A), by inserting  
16 “and” after the semicolon at the end;

17 (ii) in subparagraph (B), by striking  
18 “; and” and inserting a period; and

19 (iii) by striking subparagraph (C);  
20 and

21 (B) in paragraph (2), by inserting after  
22 the period at the end the following: “In deter-  
23 mining the penalty under subsection (a)(1), the  
24 Director shall give consideration to the length

1 of time the enterprise should reasonably take to  
2 achieve the goal.”;

3 (3) in the first sentence of subsection (d)—

4 (A) by striking “request the Attorney Gen-  
5 eral of the United States to” and inserting “,  
6 in the discretion of the Director,”; and

7 (B) by inserting “, or request that the At-  
8 torney General of the United States bring such  
9 an action” before the period at the end;

10 (4) by striking subsection (f); and

11 (5) by redesignating subsection (g) as sub-  
12 section (f).

13 (d) ENFORCEMENT OF SUBPOENAS.—Section  
14 1348(c) of the Housing and Community Development Act  
15 of 1992 (12 U.S.C. 4588(c)) is amended—

16 (1) by striking “request the Attorney General  
17 of the United States to” and inserting “, in the dis-  
18 cretion of the Director,”; and

19 (2) by inserting “or request that the Attorney  
20 General of the United States bring such an action,”  
21 after “District of Columbia,”.

22 (e) CONFORMING AMENDMENT.—The heading for  
23 subpart C of part 2 of subtitle A of title XIII of the Hous-  
24 ing and Community Development Act of 1992 is amended  
25 to read as follows:

1                   **“Subpart C—Enforcement”.**

2   **SEC. 143. CONFORMING AMENDMENTS.**

3           Part 2 of subtitle A of title XIII of the Housing and  
4   Community Development Act of 1992 (12 U.S.C. 4541 et  
5   seq.) is amended—

6           (1) by striking “Secretary” each place such  
7   term appears in such part and inserting “Director”;

8           (2) in the section heading for section 1323 (12  
9   U.S.C. 4543), by inserting “**OF ENTERPRISES**” be-  
10   fore the period at the end;

11          (3) by striking section 1327 (12 U.S.C. 4547);

12          (4) by striking section 1328 (12 U.S.C. 4548);

13          (5) by redesignating section 1329 (as amended  
14   by section 135) as section 1327;

15          (6) in sections 1345(c)(1)(A), 1346(a), and  
16   1346(b) (12 U.S.C. 4585(c)(1)(A), 4586(a), and  
17   4586(b)), by striking “Secretary’s” each place such  
18   term appears and inserting “Director’s”; and

19          (7) by striking section 1349 (12 U.S.C. 4589).

20                   **Subtitle C—Prompt Corrective**  
21                   **Action**

22   **SEC. 151. CAPITAL CLASSIFICATIONS.**

23          (a) IN GENERAL.—Section 1364 of the Housing and  
24   Community Development Act of 1992 (12 U.S.C. 4614)  
25   is amended—

1 (1) in the heading for subsection (a), by strik-  
2 ing “IN GENERAL” and inserting “ENTERPRISES”.

3 (2) in subsection (c)—

4 (A) by striking “subsection (b)” and in-  
5 serting “subsection (c)”;

6 (B) by striking “enterprises” and inserting  
7 “regulated entities”; and

8 (C) by striking the last sentence;

9 (3) by redesignating subsections (c) (as so  
10 amended by paragraph (2) of this subsection) and  
11 (d) as subsections (d) and (f), respectively;

12 (4) by striking subsection (b) and inserting the  
13 following new subsections:

14 “(b) FEDERAL HOME LOAN BANKS.—

15 “(1) ESTABLISHMENT AND CRITERIA.—For  
16 purposes of this subtitle, the Director shall, by regu-  
17 lation—

18 “(A) establish the capital classifications  
19 specified under paragraph (2) for the Federal  
20 home loan banks;

21 “(B) establish criteria for each such cap-  
22 ital classification based on the amount and  
23 types of capital held by a bank and the risk-  
24 based, minimum, and critical capital levels for  
25 the banks and taking due consideration of the

capital classifications established under subsection (a) for the enterprises, with such modifications as the Director determines to be appropriate to reflect the difference in operations between the banks and the enterprises; and

“(C) shall classify the Federal home loan banks according to such capital classifications.

“(2) CLASSIFICATIONS.—The capital classifications specified under this paragraph are—

“(A) adequately capitalized;

“(B) undercapitalized;

“(C) significantly undercapitalized; and

“(D) critically undercapitalized.

“(c) DISCRETIONARY CLASSIFICATION.—

“(1) GROUNDS FOR RECLASSIFICATION.—The Director may reclassify a regulated entity under paragraph (2) if—

“(A) at any time, the Director determines in writing that the regulated entity is engaging in conduct that could result in a rapid depletion of core or total capital or, in the case of an enterprise, that the value of the property subject to mortgages held or securitized by the enterprise has decreased significantly;

1           “(B) after notice and an opportunity for  
2           hearing, the Director determines that the regu-  
3           lated entity is in an unsafe or unsound condi-  
4           tion; or

5           “(C) pursuant to section 1371(b), the Di-  
6           rector deems the regulated entity to be engag-  
7           ing in an unsafe or unsound practice.

8           “(2) RECLASSIFICATION.—In addition to any  
9           other action authorized under this title, including  
10          the reclassification of a regulated entity for any rea-  
11          son not specified in this subsection, if the Director  
12          takes any action described in paragraph (1) the Di-  
13          rector may classify a regulated entity—

14          “(A) as undercapitalized, if the regulated  
15          entity is otherwise classified as adequately cap-  
16          italized;

17          “(B) as significantly undercapitalized, if  
18          the regulated entity is otherwise classified as  
19          undercapitalized; and

20          “(C) as critically undercapitalized, if the  
21          regulated entity is otherwise classified as sig-  
22          nificantly undercapitalized.”; and

23          (5) by inserting after subsection (d) (as so re-  
24          designated by paragraph (3) of this subsection), the  
25          following new subsection:



1 “(e) RESTRICTION ON CAPITAL DISTRIBUTIONS.—

2 “(1) IN GENERAL.—A regulated entity shall  
3 make no capital distribution if, after making the dis-  
4 tribution, the regulated entity would be under-  
5 capitalized.

6 “(2) EXCEPTION.—Notwithstanding paragraph  
7 (1), the Director may permit a regulated entity, to  
8 the extent appropriate or applicable, to repurchase,  
9 redeem, retire, or otherwise acquire shares or owner-  
10 ship interests if the repurchase, redemption, retire-  
11 ment, or other acquisition—

12 “(A) is made in connection with the  
13 issuance of additional shares or obligations of  
14 the regulated entity in at least an equivalent  
15 amount; and

16 “(B) will reduce the financial obligations of  
17 the regulated entity or otherwise improve the fi-  
18 nancial condition of the entity.”.

19 (b) REGULATIONS.—Not later than the expiration of  
20 the 180-day period beginning on the effective date under  
21 section 185, the Director of the Federal Housing Finance  
22 Agency shall issue regulations to carry out section 1364(b)  
23 of the Housing and Community Development Act of 1992  
24 (as added by paragraph (4) of this subsection), relating  
25 to capital classifications for the Federal home loan banks.

1 **SEC. 152. SUPERVISORY ACTIONS APPLICABLE TO UNDER-**  
2 **CAPITALIZED REGULATED ENTITIES.**

3 Section 1365 of the Housing and Community Devel-  
4 opment Act of 1992 (12 U.S.C. 4615) is amended—

5 (1) in the section heading, by striking “**ENTER-**  
6 **PRISES**” and inserting “**REGULATED ENTITIES**”;

7 (2) in subsection (a)—

8 (A) by redesignating paragraphs (1) and  
9 (2) as paragraphs (2) and (3), respectively;

10 (B) by inserting before paragraph (2), as  
11 so redesignated by subparagraph (A) of this  
12 paragraph, the following paragraph:

13 “(1) **REQUIRED MONITORING.**—The Director  
14 shall—

15 “(A) closely monitor the condition of any  
16 regulated entity that is classified as under-  
17 capitalized;

18 “(B) closely monitor compliance with the  
19 capital restoration plan, restrictions, and re-  
20 quirements imposed under this section; and

21 “(C) periodically review the plan, restric-  
22 tions, and requirements applicable to the under-  
23 capitalized regulated entity to determine wheth-  
24 er the plan, restrictions, and requirements are  
25 achieving the purpose of this section.”; and

1 (C) by inserting at the end the following  
2 new paragraphs:

3 “(4) RESTRICTION OF ASSET GROWTH.—A reg-  
4 ulated entity that is classified as undercapitalized  
5 shall not permit its average total assets (as such  
6 term is defined in section 1316(b) during any cal-  
7 endar quarter to exceed its average total assets dur-  
8 ing the preceding calendar quarter unless—

9 “(A) the Director has accepted the capital  
10 restoration plan of the regulated entity;

11 “(B) any increase in total assets is con-  
12 sistent with the plan; and

13 “(C) the ratio of total capital to assets for  
14 the regulated entity increases during the cal-  
15 endar quarter at a rate sufficient to enable the  
16 entity to become adequately capitalized within a  
17 reasonable time.

18 “(5) PRIOR APPROVAL OF ACQUISITIONS, NEW  
19 PRODUCTS, AND NEW ACTIVITIES.—A regulated enti-  
20 ty that is classified as undercapitalized shall not, di-  
21 rectly or indirectly, acquire any interest in any entity  
22 or initially offer any new product (as such term is  
23 defined in section 1321(f)) or engage in any new ac-  
24 tivity, service, undertaking, or offering unless—

1           “(A) the Director has accepted the capital  
2           restoration plan of the regulated entity, the en-  
3           tity is implementing the plan, and the Director  
4           determines that the proposed action is con-  
5           sistent with and will further the achievement of  
6           the plan; or

7           “(B) the Director determines that the pro-  
8           posed action will further the purpose of this  
9           section.”;

10          (3) in the subsection heading for subsection (b),  
11          by striking “FROM UNDERCAPITALIZED TO SIGNIFI-  
12          CANTLY UNDERCAPITALIZED”; and

13          (4) by striking subsection (c) and inserting the  
14          following new subsection:

15          “(c) OTHER DISCRETIONARY SAFEGUARDS.—The  
16          Director may take, with respect to a regulated entity that  
17          is classified as undercapitalized, any of the actions author-  
18          ized to be taken under section 1366 with respect to a regu-  
19          lated entity that is classified as significantly undercapital-  
20          ized, if the Director determines that such actions are nec-  
21          essary to carry out the purpose of this subtitle.”.

1 **SEC. 153. SUPERVISORY ACTIONS APPLICABLE TO SIGNIFI-**  
2 **CANTLY UNDERCAPITALIZED REGULATED**  
3 **ENTITIES.**

4 Section 1366 of the Housing and Community Devel-  
5 opment Act of 1992 (12 U.S.C. 4616) is amended—

6 (1) in the section heading, by striking “**ENTER-**  
7 **PRISES**” and inserting “**REGULATED ENTITIES**”;

8 (2) in subsection (a)(2)(A), by striking “enter-  
9 prise” the last place such term appears;

10 (3) in subsection (b)—

11 (A) in the subsection heading, by striking  
12 “DISCRETIONARY SUPERVISORY ACTIONS” and  
13 inserting “SPECIFIC ACTIONS”.

14 (B) in the matter preceding paragraph (1),  
15 by striking “may, at any time, take any” and  
16 inserting “shall carry out this section by taking,  
17 at any time, one or more”;

18 (C) by redesignating paragraphs (5) and  
19 (6) as paragraphs (6) and (7), respectively;

20 (D) by inserting after paragraph (4) the  
21 following new paragraph:

22 “(5) IMPROVEMENT OF MANAGEMENT.—Take  
23 one or more of the following actions:

24 “(A) NEW ELECTION OF BOARD.—Order a  
25 new election for the board of directors of the  
26 regulated entity.

1           “(B) DISMISSAL OF DIRECTORS OR EXECU-  
2           TIVE OFFICERS.—Require the regulated entity  
3           to dismiss from office any director or executive  
4           officer who had held office for more than 180  
5           days immediately before the entity became  
6           undercapitalized. Dismissal under this subpara-  
7           graph shall not be construed to be a removal  
8           pursuant to the Director’s enforcement powers  
9           provided in section 1377.

10           “(C) EMPLOY QUALIFIED EXECUTIVE OF-  
11           FICERS.—Require the regulated entity to em-  
12           ploy qualified executive officers (who, if the Di-  
13           rector so specifies, shall be subject to approval  
14           by the Director).”; and

15           (E) by inserting at the end the following  
16           new paragraph:

17           “(8) OTHER ACTION.—Require the regulated  
18           entity to take any other action that the Director de-  
19           termines will better carry out the purpose of this  
20           section than any of the actions specified in this  
21           paragraph.”;

22           (4) by redesignating subsection (c) as sub-  
23           section (d); and

24           (5) by inserting after subsection (b) the fol-  
25           lowing new subsection:

1       “(c) RESTRICTION ON COMPENSATION OF EXECU-  
 2 TIVE OFFICERS.—A regulated entity that is classified as  
 3 significantly undercapitalized may not, without prior writ-  
 4 ten approval by the Director—

5               “(1) pay any bonus to any executive officer; or

6               “(2) provide compensation to any executive offi-  
 7 cer at a rate exceeding that officer’s average rate of  
 8 compensation (excluding bonuses, stock options, and  
 9 profit sharing) during the 12 calendar months pre-  
 10 ceding the calendar month in which the regulated  
 11 entity became undercapitalized.”.

12 **SEC. 154. AUTHORITY OVER CRITICALLY UNDERCAPITAL-**  
 13 **IZED REGULATED ENTITIES.**

14       (a) IN GENERAL.—Section 1367 of the Housing and  
 15 Community Development Act of 1992 (12 U.S.C. 4617)  
 16 is amended to read as follows:

17 **“SEC. 1367. AUTHORITY OVER CRITICALLY UNDERCAPITAL-**  
 18 **IZED REGULATED ENTITIES.**

19       “(a) APPOINTMENT OF AGENCY AS CONSERVATOR  
 20 OR RECEIVER.—

21               “(1) IN GENERAL.—Notwithstanding any other  
 22 provision of Federal or State law, if any of the  
 23 grounds under paragraph (3) exist, at the discretion  
 24 of the Director, the Director may establish a con-  
 25 servatorship or receivership, as appropriate, for the

1       purpose of reorganizing, rehabilitating, or winding  
2       up the affairs of a regulated entity.

3               “(2) APPOINTMENT.—In any conservatorship or  
4       receivership established under this section, the Di-  
5       rector shall appoint the Agency as conservator or re-  
6       ceiver.

7               “(3) GROUNDS FOR APPOINTMENT.—The  
8       grounds for appointing a conservator or receiver for  
9       a regulated entity are as follows:

10               “(A) ASSETS INSUFFICIENT FOR OBLIGA-  
11       TIONS.—The assets of the regulated entity are  
12       less than the obligations of the regulated entity  
13       to its creditors and others.

14               “(B) SUBSTANTIAL DISSIPATION.—Sub-  
15       stantial dissipation of assets or earnings due  
16       to—

17               “(i) any violation of any provision of  
18       Federal or State law; or

19               “(ii) any unsafe or unsound practice.

20               “(C) UNSAFE OR UNSOUND CONDITION.—  
21       An unsafe or unsound condition to transact  
22       business.

23               “(D) CEASE-AND-DESIST ORDERS.—Any  
24       willful violation of a cease-and-desist order that  
25       has become final.



1           “(E) CONCEALMENT.—Any concealment of  
2           the books, papers, records, or assets of the reg-  
3           ulated entity, or any refusal to submit the  
4           books, papers, records, or affairs of the regu-  
5           lated entity, for inspection to any examiner or  
6           to any lawful agent of the Director.

7           “(F) INABILITY TO MEET OBLIGATIONS.—  
8           The regulated entity is likely to be unable to  
9           pay its obligations or meet the demands of its  
10          creditors in the normal course of business.

11          “(G) LOSSES.—The regulated entity has  
12          incurred or is likely to incur losses that will de-  
13          plete all or substantially all of its capital, and  
14          there is no reasonable prospect for the regu-  
15          lated entity to become adequately capitalized  
16          (as defined in section 1364(a)(1)).

17          “(H) VIOLATIONS OF LAW.—Any violation  
18          of any law or regulation, or any unsafe or un-  
19          sound practice or condition that is likely to—

20                 “(i) cause insolvency or substantial  
21                 dissipation of assets or earnings; or

22                 “(ii) weaken the condition of the regu-  
23                 lated entity.

24          “(I) CONSENT.—The regulated entity, by  
25          resolution of its board of directors or its share-

1 holders or members, consents to the appoint-  
2 ment.

3 “(J) UNDERCAPITALIZATION.—The regu-  
4 lated entity is undercapitalized or significantly  
5 undercapitalized (as defined in section  
6 1364(a)(3) or in regulations issued pursuant to  
7 section 1364(b), as applicable), and—

8 “(i) has no reasonable prospect of be-  
9 coming adequately capitalized;

10 “(ii) fails to become adequately cap-  
11 italized, as required by—

12 “(I) section 1365(a)(1) with re-  
13 spect to an undercapitalized regulated  
14 entity; or

15 “(II) section 1366(a)(1) with re-  
16 spect to a significantly undercapital-  
17 ized regulated entity;

18 “(iii) fails to submit a capital restora-  
19 tion plan acceptable to the Agency within  
20 the time prescribed under section 1369C;  
21 or

22 “(iv) materially fails to implement a  
23 capital restoration plan submitted and ac-  
24 cepted under section 1369C.

1 “(K) CRITICAL UNDERCAPITALIZATION.—

2 The regulated entity is critically undercapital-  
3 ized, as defined in section 1364(a)(4) or in reg-  
4 ulations issued pursuant to section 1364(b), as  
5 applicable.

6 “(L) MONEY LAUNDERING.—The Attorney  
7 General notifies the Director in writing that the  
8 regulated entity has been found guilty of a  
9 criminal offense under section 1956 or 1957 of  
10 title 18, United States Code, or section 5322 or  
11 5324 of title 31, United States Code.

12 “(4) MANDATORY RECEIVERSHIP.—

13 “(A) IN GENERAL.—The Director shall ap-  
14 point the Agency as receiver for a regulated en-  
15 tity if the Director determines, in writing,  
16 that—

17 “(i) the assets of the regulated entity  
18 are, and during the preceding 30 calendar  
19 days have been, less than the obligations of  
20 the regulated entity to its creditors and  
21 others; or

22 “(ii) the regulated entity is not, and  
23 during the preceding 30 calendar days has  
24 not been, generally paying the debts of the  
25 regulated entity (other than debts that are

1           the subject of a bona fide dispute) as such  
2           debts become due.

3           “(B) PERIODIC DETERMINATION RE-  
4           QUIRED FOR CRITICALLY UNDER CAPITALIZED  
5           REGULATED ENTITY.—If a regulated entity is  
6           critically undercapitalized, the Director shall  
7           make a determination, in writing, as to whether  
8           the regulated entity meets the criteria specified  
9           in clause (i) or (ii) of subparagraph (A)—

10                 “(i) not later than 30 calendar days  
11                 after the regulated entity initially becomes  
12                 critically undercapitalized; and

13                 “(ii) at least once during each suc-  
14                 ceeding 30-calendar day period.

15           “(C) DETERMINATION NOT REQUIRED IF  
16           RECEIVERSHIP ALREADY IN PLACE.—Subpara-  
17           graph (B) shall not apply with respect to a reg-  
18           ulated entity in any period during which the  
19           Agency serves as receiver for the regulated enti-  
20           ty.

21           “(D) RECEIVERSHIP TERMINATES CON-  
22           SERVATORSHIP.—The appointment under this  
23           section of the Agency as receiver of a regulated  
24           entity shall immediately terminate any con-

servatorship established under this title for the regulated entity.

“(5) JUDICIAL REVIEW.—

“(A) IN GENERAL.—If the Agency is appointed conservator or receiver under this section, the regulated entity may, within 30 days of such appointment, bring an action in the United States District Court for the judicial district in which the principal place of business of such regulated entity is located, or in the United States District Court for the District of Columbia, for an order requiring the Agency to remove itself as conservator or receiver.

“(B) REVIEW.—Upon the filing of an action under subparagraph (A), the court shall, upon the merits, dismiss such action or direct the Agency to remove itself as such conservator or receiver.

“(6) DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT OF CONSERVATOR OR RECEIVER.—The members of the board of directors of a regulated entity shall not be liable to the shareholders or creditors of the regulated entity for acquiescing in or consenting in good faith to the appoint-

1       ment of the Agency as conservator or receiver for  
2       that regulated entity.

3           “(7) AGENCY NOT SUBJECT TO ANY OTHER  
4       FEDERAL AGENCY.—When acting as conservator or  
5       receiver, the Agency shall not be subject to the di-  
6       rection or supervision of any other agency of the  
7       United States or any State in the exercise of the  
8       rights, powers, and privileges of the Agency.

9           “(b) POWERS AND DUTIES OF THE AGENCY AS CON-  
10      SERVATOR OR RECEIVER.—

11           “(1) RULEMAKING AUTHORITY OF THE AGEN-  
12      CY.—The Agency may prescribe such regulations as  
13      the Agency determines to be appropriate regarding  
14      the conduct of conservatorships or receiverships.

15           “(2) GENERAL POWERS.—

16           “(A) SUCCESSOR TO REGULATED ENTI-  
17      TY.—The Agency shall, as conservator or re-  
18      ceiver, and by operation of law, immediately  
19      succeed to—

20           “(i) all rights, titles, powers, and  
21           privileges of the regulated entity, and of  
22           any stockholder, officer, or director of such  
23           regulated entity with respect to the regu-  
24           lated entity and the assets of the regulated  
25           entity; and

1                   “(ii) title to the books, records, and  
2                   assets of any other legal custodian of such  
3                   regulated entity.

4                   “(B) OPERATE THE REGULATED ENTI-  
5                   TY.—The Agency may, as conservator or re-  
6                   ceiver—

7                   “(i) take over the assets of and oper-  
8                   ate the regulated entity with all the powers  
9                   of the shareholders, the directors, and the  
10                  officers of the regulated entity and conduct  
11                  all business of the regulated entity;

12                  “(ii) collect all obligations and money  
13                  due the regulated entity;

14                  “(iii) perform all functions of the reg-  
15                  ulated entity in the name of the regulated  
16                  entity which are consistent with the ap-  
17                  pointment as conservator or receiver; and

18                  “(iv) preserve and conserve the assets  
19                  and property of such regulated entity.

20                  “(C) FUNCTIONS OF OFFICERS, DIREC-  
21                  TORS, AND SHAREHOLDERS OF A REGULATED  
22                  ENTITY.—The Agency may, by regulation or  
23                  order, provide for the exercise of any function  
24                  by any stockholder, director, or officer of any

1 regulated entity for which the Agency has been  
2 named conservator or receiver.

3 “(D) POWERS AS CONSERVATOR.—The  
4 Agency may, as conservator, take such action  
5 as may be—

6 “(i) necessary to put the regulated en-  
7 tity in a sound and solvent condition; and

8 “(ii) appropriate to carry on the busi-  
9 ness of the regulated entity and preserve  
10 and conserve the assets and property of  
11 the regulated entity, including, if two or  
12 more Federal home loan banks have been  
13 placed in conservatorship contempora-  
14 neously, merging two or more such banks  
15 into a single Federal home loan bank.

16 “(E) ADDITIONAL POWERS AS RE-  
17 CEIVER.—The Agency may, as receiver, place  
18 the regulated entity in liquidation and proceed  
19 to realize upon the assets of the regulated enti-  
20 ty, having due regard to the conditions of the  
21 housing finance market.

22 “(F) ORGANIZATION OF NEW REGULATED  
23 ENTITIES.—The Agency may, as receiver, orga-  
24 nize a successor regulated entity that will oper-  
25 ate pursuant to subsection (i).



1           “(G) TRANSFER OF ASSETS AND LIABIL-  
2           ITIES.—The Agency may, as conservator or re-  
3           ceiver, transfer any asset or liability of the reg-  
4           ulated entity in default without any approval,  
5           assignment, or consent with respect to such  
6           transfer. Any Federal home loan bank may,  
7           with the approval of the Agency, acquire the as-  
8           sets of any Bank in conservatorship or receiver-  
9           ship, and assume the liabilities of such Bank.

10          “(H) PAYMENT OF VALID OBLIGATIONS.—  
11          The Agency, as conservator or receiver, shall, to  
12          the extent of proceeds realized from the per-  
13          formance of contracts or sale of the assets of a  
14          regulated entity, pay all valid obligations of the  
15          regulated entity in accordance with the pre-  
16          scriptions and limitations of this section.

17          “(I) SUBPOENA AUTHORITY.—

18               “(i) IN GENERAL.—

19                       “(I) IN GENERAL.—The Agency  
20                       may, as conservator or receiver, and  
21                       for purposes of carrying out any  
22                       power, authority, or duty with respect  
23                       to a regulated entity (including deter-  
24                       mining any claim against the regu-  
25                       lated entity and determining and real-

1           izing upon any asset of any person in  
2           the course of collecting money due the  
3           regulated entity), exercise any power  
4           established under section 1348.

5                   “(II) APPLICABILITY OF LAW.—

6           The provisions of section 1348 shall  
7           apply with respect to the exercise of  
8           any power exercised under this sub-  
9           paragraph in the same manner as  
10          such provisions apply under that sec-  
11          tion.

12                   “(ii) AUTHORITY OF DIRECTOR.—A

13          subpoena or subpoena duces tecum may be  
14          issued under clause (i) only by, or with the  
15          written approval of, the Director, or the  
16          designee of the Director.

17                   “(iii) RULE OF CONSTRUCTION.—This

18          subsection shall not be construed to limit  
19          any rights that the Agency, in any capac-  
20          ity, might otherwise have under section  
21          1317 or 1379D.

22                   “(J) CONTRACTING FOR SERVICES.—The

23          Agency may, as conservator or receiver, provide  
24          by contract for the carrying out of any of its

1 functions, activities, actions, or duties as con-  
2 servator or receiver.

3 “(K) INCIDENTAL POWERS.—The Agency  
4 may, as conservator or receiver—

5 “(i) exercise all powers and authori-  
6 ties specifically granted to conservators or  
7 receivers, respectively, under this section,  
8 and such incidental powers as shall be nec-  
9 essary to carry out such powers; and

10 “(ii) take any action authorized by  
11 this section, which the Agency determines  
12 is in the best interests of the regulated en-  
13 tity or the Agency.

14 “(3) AUTHORITY OF RECEIVER TO DETERMINE  
15 CLAIMS.—

16 “(A) IN GENERAL.—The Agency may, as  
17 receiver, determine claims in accordance with  
18 the requirements of this subsection and any  
19 regulations prescribed under paragraph (4).

20 “(B) NOTICE REQUIREMENTS.—The re-  
21 ceiver, in any case involving the liquidation or  
22 winding up of the affairs of a closed regulated  
23 entity, shall—

24 “(i) promptly publish a notice to the  
25 creditors of the regulated entity to present

1           their claims, together with proof, to the re-  
2           ceiver by a date specified in the notice  
3           which shall be not less than 90 days after  
4           the publication of such notice; and

5           “(ii) republish such notice approxi-  
6           mately 1 month and 2 months, respec-  
7           tively, after the publication under clause  
8           (i).

9           “(C) MAILING REQUIRED.—The receiver  
10          shall mail a notice similar to the notice pub-  
11          lished under subparagraph (B)(i) at the time of  
12          such publication to any creditor shown on the  
13          books of the regulated entity—

14               “(i) at the last address of the creditor  
15               appearing in such books; or

16               “(ii) upon discovery of the name and  
17               address of a claimant not appearing on the  
18               books of the regulated entity within 30  
19               days after the discovery of such name and  
20               address.

21          “(4) RULEMAKING AUTHORITY RELATING TO  
22          DETERMINATION OF CLAIMS.—Subject to subsection  
23          (c), the Director may prescribe regulations regarding  
24          the allowance or disallowance of claims by the re-

1       ceiver and providing for administrative determina-  
2       tion of claims and review of such determination.

3               “(5) PROCEDURES FOR DETERMINATION OF  
4       CLAIMS.—

5               “(A) DETERMINATION PERIOD.—

6               “(i) IN GENERAL.—Before the end of  
7       the 180-day period beginning on the date  
8       on which any claim against a regulated en-  
9       tity is filed with the Agency as receiver,  
10      the Agency shall determine whether to  
11      allow or disallow the claim and shall notify  
12      the claimant of any determination with re-  
13      spect to such claim.

14              “(ii) EXTENSION OF TIME.—The pe-  
15      riod described in clause (i) may be ex-  
16      tended by a written agreement between the  
17      claimant and the Agency.

18              “(iii) MAILING OF NOTICE SUFFI-  
19      CIENT.—The notification requirements of  
20      clause (i) shall be deemed to be satisfied if  
21      the notice of any determination with re-  
22      spect to any claim is mailed to the last ad-  
23      dress of the claimant which appears—

24              “(I) on the books of the regu-  
25      lated entity;

1 “(II) in the claim filed by the  
2 claimant; or

3 “(III) in documents submitted in  
4 proof of the claim.

5 “(iv) CONTENTS OF NOTICE OF DIS-  
6 ALLOWANCE.—If any claim filed under  
7 clause (i) is disallowed, the notice to the  
8 claimant shall contain—

9 “(I) a statement of each reason  
10 for the disallowance; and

11 “(II) the procedures available for  
12 obtaining agency review of the deter-  
13 mination to disallow the claim or judi-  
14 cial determination of the claim.

15 “(B) ALLOWANCE OF PROVEN CLAIM.—  
16 The receiver shall allow any claim received on  
17 or before the date specified in the notice pub-  
18 lished under paragraph (3)(B)(i), or the date  
19 specified in the notice required under paragraph  
20 (3)(C), which is proved to the satisfaction of  
21 the receiver.

22 “(C) DISALLOWANCE OF CLAIMS FILED  
23 AFTER END OF FILING PERIOD.—Claims filed  
24 after the date specified in the notice published  
25 under paragraph (3)(B)(i), or the date specified

1 under paragraph (3)(C), shall be disallowed and  
2 such disallowance shall be final.

3 “(D) AUTHORITY TO DISALLOW CLAIMS.—

4 “(i) IN GENERAL.—The receiver may  
5 disallow any portion of any claim by a  
6 creditor or claim of security, preference, or  
7 priority which is not proved to the satisfac-  
8 tion of the receiver.

9 “(ii) PAYMENTS TO LESS THAN  
10 FULLY SECURED CREDITORS.—In the case  
11 of a claim of a creditor against a regulated  
12 entity which is secured by any property or  
13 other asset of such regulated entity, the re-  
14 ceiver—

15 “(I) may treat the portion of  
16 such claim which exceeds an amount  
17 equal to the fair market value of such  
18 property or other asset as an unse-  
19 cured claim against the regulated en-  
20 tity; and

21 “(II) may not make any payment  
22 with respect to such unsecured por-  
23 tion of the claim other than in connec-  
24 tion with the disposition of all claims

1 of unsecured creditors of the regu-  
2 lated entity.

3 “(iii) EXCEPTIONS.—No provision of  
4 this paragraph shall apply with respect to  
5 any extension of credit from any Federal  
6 Reserve Bank, Federal home loan bank, or  
7 the Treasury of the United States.

8 “(E) NO JUDICIAL REVIEW OF DETER-  
9 MINATION PURSUANT TO SUBPARAGRAPH  
10 (D).—No court may review the determination  
11 of the Agency under subparagraph (D) to dis-  
12 allow a claim. This subparagraph shall not af-  
13 fect the authority of a claimant to obtain de  
14 novo judicial review of a claim pursuant to  
15 paragraph (6).

16 “(F) LEGAL EFFECT OF FILING.—

17 “(i) STATUTE OF LIMITATION  
18 TOLLED.—For purposes of any applicable  
19 statute of limitations, the filing of a claim  
20 with the receiver shall constitute a com-  
21 mencement of an action.

22 “(ii) NO PREJUDICE TO OTHER AC-  
23 TIONS.—Subject to paragraph (10), the fil-  
24 ing of a claim with the receiver shall not  
25 prejudice any right of the claimant to con-



1           tinue any action which was filed before the  
2           date of the appointment of the receiver,  
3           subject to the determination of claims by  
4           the receiver.

5           “(6) PROVISION FOR JUDICIAL DETERMINATION  
6           OF CLAIMS.—

7           “(A) IN GENERAL.—The claimant may file  
8           suit on a claim (or continue an action com-  
9           menced before the appointment of the receiver)  
10          in the district or territorial court of the United  
11          States for the district within which the prin-  
12          cipal place of business of the regulated entity is  
13          located or the United States District Court for  
14          the District of Columbia (and such court shall  
15          have jurisdiction to hear such claim), before the  
16          end of the 60-day period beginning on the ear-  
17          lier of—

18                 “(i) the end of the period described in  
19                 paragraph (5)(A)(i) with respect to any  
20                 claim against a regulated entity for which  
21                 the Agency is receiver; or

22                 “(ii) the date of any notice of dis-  
23                 allowance of such claim pursuant to para-  
24                 graph (5)(A)(i).

“(B) STATUTE OF LIMITATIONS.—A claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver), and such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim, if the claimant fails, before the end of the 60-day period described under subparagraph (A), to file suit on such claim (or continue an action commenced before the appointment of the receiver).

“(7) REVIEW OF CLAIMS.—

“(A) OTHER REVIEW PROCEDURES.—

“(i) IN GENERAL.—The Agency shall establish such alternative dispute resolution processes as may be appropriate for the resolution of claims filed under paragraph (5)(A)(i).

“(ii) CRITERIA.—In establishing alternative dispute resolution processes, the Agency shall strive for procedures which are expeditious, fair, independent, and low cost.

“(iii) VOLUNTARY BINDING OR NON-BINDING PROCEDURES.—The Agency may

1           establish both binding and nonbinding  
2           processes, which may be conducted by any  
3           government or private party. All parties,  
4           including the claimant and the Agency,  
5           must agree to the use of the process in a  
6           particular case.

7           “(B) CONSIDERATION OF INCENTIVES.—

8           The Agency shall seek to develop incentives for  
9           claimants to participate in the alternative dis-  
10          pute resolution process.

11          “(8) EXPEDITED DETERMINATION OF  
12          CLAIMS.—

13          “(A) ESTABLISHMENT REQUIRED.—The  
14          Agency shall establish a procedure for expedited  
15          relief outside of the routine claims process es-  
16          tablished under paragraph (5) for claimants  
17          who—

18               “(i) allege the existence of legally  
19               valid and enforceable or perfected security  
20               interests in assets of any regulated entity  
21               for which the Agency has been appointed  
22               receiver; and

23               “(ii) allege that irreparable injury will  
24               occur if the routine claims procedure is fol-  
25               lowed.

1           “(B) DETERMINATION PERIOD.—Before  
2           the end of the 90-day period beginning on the  
3           date any claim is filed in accordance with the  
4           procedures established under subparagraph (A),  
5           the Director shall—

6                   “(i) determine—

7                           “(I) whether to allow or disallow  
8                           such claim; or

9                           “(II) whether such claim should  
10                          be determined pursuant to the proce-  
11                          dures established under paragraph  
12                          (5); and

13                   “(ii) notify the claimant of the deter-  
14                   mination, and if the claim is disallowed,  
15                   provide a statement of each reason for the  
16                   disallowance and the procedure for obtain-  
17                   ing agency review or judicial determina-  
18                   tion.

19           “(C) PERIOD FOR FILING OR RENEWING  
20           SUIT.—Any claimant who files a request for ex-  
21           pedited relief shall be permitted to file a suit,  
22           or to continue a suit filed before the appoint-  
23           ment of the receiver, seeking a determination of  
24           the rights of the claimant with respect to such  
25           security interest after the earlier of—

1 “(i) the end of the 90-day period be-  
2 ginning on the date of the filing of a re-  
3 quest for expedited relief; or

4 “(ii) the date the Agency denies the  
5 claim.

6 “(D) STATUTE OF LIMITATIONS.—If an  
7 action described under subparagraph (C) is not  
8 filed, or the motion to renew a previously filed  
9 suit is not made, before the end of the 30-day  
10 period beginning on the date on which such ac-  
11 tion or motion may be filed under subparagraph  
12 (B), the claim shall be deemed to be disallowed  
13 as of the end of such period (other than any  
14 portion of such claim which was allowed by the  
15 receiver), such disallowance shall be final, and  
16 the claimant shall have no further rights or  
17 remedies with respect to such claim.

18 “(E) LEGAL EFFECT OF FILING.—

19 “(i) STATUTE OF LIMITATION  
20 TOLLED.—For purposes of any applicable  
21 statute of limitations, the filing of a claim  
22 with the receiver shall constitute a com-  
23 mencement of an action.

24 “(ii) NO PREJUDICE TO OTHER AC-  
25 TIONS.—Subject to paragraph (10), the fil-

ing of a claim with the receiver shall not prejudice any right of the claimant to continue any action that was filed before the appointment of the receiver, subject to the determination of claims by the receiver.

“(9) PAYMENT OF CLAIMS.—

“(A) IN GENERAL.—The receiver may, in the discretion of the receiver, and to the extent funds are available from the assets of the regulated entity, pay creditor claims, in such manner and amounts as are authorized under this section, which are—

“(i) allowed by the receiver;

“(ii) approved by the Agency pursuant to a final determination pursuant to paragraph (7) or (8); or

“(iii) determined by the final judgment of any court of competent jurisdiction.

“(B) AGREEMENTS AGAINST THE INTEREST OF THE AGENCY.—No agreement that tends to diminish or defeat the interest of the Agency in any asset acquired by the Agency as receiver under this section shall be valid against the Agency unless such agreement is in writing,

1 and executed by an authorized official of the  
2 regulated entity, except that such requirements  
3 for qualified financial contracts shall be applied  
4 in a manner consistent with reasonable business  
5 trading practices in the financial contracts mar-  
6 ket.

7 “(C) PAYMENT OF DIVIDENDS ON  
8 CLAIMS.—The receiver may, in the sole discre-  
9 tion of the receiver, pay from the assets of the  
10 regulated entity dividends on proved claims at  
11 any time, and no liability shall attach to the  
12 Agency, by reason of any such payment, for  
13 failure to pay dividends to a claimant whose  
14 claim is not proved at the time of any such pay-  
15 ment.

16 “(D) RULEMAKING AUTHORITY OF THE  
17 DIRECTOR.—The Director may prescribe such  
18 rules, including definitions of terms, as the Di-  
19 rector deems appropriate to establish a single  
20 uniform interest rate for, or to make payments  
21 of post-insolvency interest to creditors holding  
22 proven claims against the receivership estates of  
23 regulated entities following satisfaction by the  
24 receiver of the principal amount of all creditor  
25 claims.

1 “(10) SUSPENSION OF LEGAL ACTIONS.—

2 “(A) IN GENERAL.—After the appointment  
3 of a conservator or receiver for a regulated enti-  
4 ty, the conservator or receiver may, in any judi-  
5 cial action or proceeding to which such regu-  
6 lated entity is or becomes a party, request a  
7 stay for a period not to exceed—

8 “(i) 45 days, in the case of any con-  
9 servator; and

10 “(ii) 90 days, in the case of any re-  
11 ceiver.

12 “(B) GRANT OF STAY BY ALL COURTS RE-  
13 QUIRED.—Upon receipt of a request by any  
14 conservator or receiver under subparagraph (A)  
15 for a stay of any judicial action or proceeding  
16 in any court with jurisdiction of such action or  
17 proceeding, the court shall grant such stay as  
18 to all parties.

19 “(11) ADDITIONAL RIGHTS AND DUTIES.—

20 “(A) PRIOR FINAL ADJUDICATION.—The  
21 Agency shall abide by any final unappealable  
22 judgment of any court of competent jurisdiction  
23 which was rendered before the appointment of  
24 the Agency as conservator or receiver.



1           “(B) RIGHTS AND REMEDIES OF CONSER-  
2           VATOR OR RECEIVER.—In the event of any ap-  
3           pealable judgment, the Agency as conservator  
4           or receiver shall—

5                   “(i) have all the rights and remedies  
6                   available to the regulated entity (before the  
7                   appointment of such conservator or re-  
8                   ceiver) and the Agency, including removal  
9                   to Federal court and all appellate rights;  
10                  and

11                  “(ii) not be required to post any bond  
12                  in order to pursue such remedies.

13           “(C) NO ATTACHMENT OR EXECUTION.—  
14           No attachment or execution may issue by any  
15           court upon assets in the possession of the re-  
16           ceiver.

17           “(D) LIMITATION ON JUDICIAL REVIEW.—  
18           Except as otherwise provided in this subsection,  
19           no court shall have jurisdiction over—

20                   “(i) any claim or action for payment  
21                   from, or any action seeking a determina-  
22                   tion of rights with respect to, the assets of  
23                   any regulated entity for which the Agency  
24                   has been appointed receiver; or

1                   “(ii) any claim relating to any act or  
2                   omission of such regulated entity or the  
3                   Agency as receiver.

4                   “(E) DISPOSITION OF ASSETS.—In exer-  
5                   cising any right, power, privilege, or authority  
6                   as conservator or receiver in connection with  
7                   any sale or disposition of assets of a regulated  
8                   entity for which the Agency has been appointed  
9                   conservator or receiver, the Agency shall con-  
10                  duct its operations in a manner which main-  
11                  tains stability in the housing finance markets  
12                  and, to the extent consistent with that goal—

13                   “(i) maximizes the net present value  
14                   return from the sale or disposition of such  
15                   assets;

16                   “(ii) minimizes the amount of any loss  
17                   realized in the resolution of cases; and

18                   “(iii) ensures adequate competition  
19                   and fair and consistent treatment of  
20                   offerors.

21                  “(12) STATUTE OF LIMITATIONS FOR ACTIONS  
22                  BROUGHT BY CONSERVATOR OR RECEIVER.—

23                   “(A) IN GENERAL.—Notwithstanding any  
24                   provision of any contract, the applicable statute  
25                   of limitations with regard to any action brought

1 by the Agency as conservator or receiver shall  
2 be—

3 “(i) in the case of any contract claim,  
4 the longer of—

5 “(I) the 6-year period beginning  
6 on the date the claim accrues; or

7 “(II) the period applicable under  
8 State law; and

9 “(ii) in the case of any tort claim, the  
10 longer of—

11 “(I) the 3-year period beginning  
12 on the date the claim accrues; or

13 “(II) the period applicable under  
14 State law.

15 “(B) DETERMINATION OF THE DATE ON  
16 WHICH A CLAIM ACCRUES.—For purposes of  
17 subparagraph (A), the date on which the stat-  
18 ute of limitations begins to run on any claim  
19 described in such subparagraph shall be the  
20 later of—

21 “(i) the date of the appointment of  
22 the Agency as conservator or receiver; or

23 “(ii) the date on which the cause of  
24 action accrues.

1           “(13) REVIVAL OF EXPIRED STATE CAUSES OF  
2 ACTION.—

3           “(A) IN GENERAL.—In the case of any tort  
4 claim described under subparagraph (B) for  
5 which the statute of limitations applicable  
6 under State law with respect to such claim has  
7 expired not more than 5 years before the ap-  
8 pointment of the Agency as conservator or re-  
9 ceiver, the Agency may bring an action as con-  
10 servator or receiver on such claim without re-  
11 gard to the expiration of the statute of limita-  
12 tion applicable under State law.

13           “(B) CLAIMS DESCRIBED.—A tort claim  
14 referred to under subparagraph (A) is a claim  
15 arising from fraud, intentional misconduct re-  
16 sulting in unjust enrichment, or intentional mis-  
17 conduct resulting in substantial loss to the reg-  
18 ulated entity.

19           “(14) ACCOUNTING AND RECORDKEEPING RE-  
20 QUIREMENTS.—

21           “(A) IN GENERAL.—The Agency as conser-  
22 vator or receiver shall, consistent with the ac-  
23 counting and reporting practices and proce-  
24 dures established by the Agency, maintain a full  
25 accounting of each conservatorship and receiv-

ership or other disposition of a regulated entity  
in default.

“(B) ANNUAL ACCOUNTING OR REPORT.—

With respect to each conservatorship or receivership, the Agency shall make an annual accounting or report available to the Board, the Comptroller General of the United States, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.

“(C) AVAILABILITY OF REPORTS.—Any re-

port prepared under subparagraph (B) shall be made available by the Agency upon request to any shareholder of a regulated entity or any member of the public.

“(D) RECORDKEEPING REQUIREMENT.—

After the end of the 6-year period beginning on the date that the conservatorship or receivership is terminated by the Director, the Agency may destroy any records of such regulated entity which the Agency, in the discretion of the Agency, determines to be unnecessary unless directed not to do so by a court of competent ju-

1 jurisdiction or governmental agency, or prohibited  
2 by law.

3 “(15) FRAUDULENT TRANSFERS.—

4 “(A) IN GENERAL.—The Agency, as con-  
5 servator or receiver, may avoid a transfer of  
6 any interest of a regulated entity-affiliated  
7 party, or any person who the conservator or re-  
8 ceiver determines is a debtor of the regulated  
9 entity, in property, or any obligation incurred  
10 by such party or person, that was made within  
11 5 years of the date on which the Agency was  
12 appointed conservator or receiver, if such party  
13 or person voluntarily or involuntarily made such  
14 transfer or incurred such liability with the in-  
15 tent to hinder, delay, or defraud the regulated  
16 entity, the Agency, the conservator, or receiver.

17 “(B) RIGHT OF RECOVERY.—To the extent  
18 a transfer is avoided under subparagraph (A),  
19 the conservator or receiver may recover, for the  
20 benefit of the regulated entity, the property  
21 transferred, or, if a court so orders, the value  
22 of such property (at the time of such transfer)  
23 from—

24 “(i) the initial transferee of such  
25 transfer or the regulated entity-affiliated

1 party or person for whose benefit such  
2 transfer was made; or

3 “(ii) any immediate or mediate trans-  
4 feree of any such initial transferee.

5 “(C) RIGHTS OF TRANSFEREE OR OBLI-  
6 GEE.—The conservator or receiver may not re-  
7 cover under subparagraph (B) from—

8 “(i) any transferee that takes for  
9 value, including satisfaction or securing of  
10 a present or antecedent debt, in good faith;  
11 or

12 “(ii) any immediate or mediate good  
13 faith transferee of such transferee.

14 “(D) RIGHTS UNDER THIS PARAGRAPH.—  
15 The rights under this paragraph of the conser-  
16 vator or receiver described under subparagraph  
17 (A) shall be superior to any rights of a trustee  
18 or any other party (other than any party which  
19 is a Federal agency) under title 11, United  
20 States Code.

21 “(16) ATTACHMENT OF ASSETS AND OTHER IN-  
22 JUNCTIVE RELIEF.—Subject to paragraph (17), any  
23 court of competent jurisdiction may, at the request  
24 of the conservator or receiver, issue an order in ac-  
25 cordance with Rule 65 of the Federal Rules of Civil

1 Procedure, including an order placing the assets of  
2 any person designated by the Agency or such conser-  
3 vator under the control of the court, and appointing  
4 a trustee to hold such assets.

5 “(17) STANDARDS OF PROOF.—Rule 65 of the  
6 Federal Rules of Civil Procedure shall apply with re-  
7 spect to any proceeding under paragraph (16) with-  
8 out regard to the requirement of such rule that the  
9 applicant show that the injury, loss, or damage is ir-  
10 reparable and immediate.

11 “(18) TREATMENT OF CLAIMS ARISING FROM  
12 BREACH OF CONTRACTS EXECUTED BY THE RE-  
13 CEIVER OR CONSERVATOR.—

14 “(A) IN GENERAL.—Notwithstanding any  
15 other provision of this subsection, any final and  
16 unappealable judgment for monetary damages  
17 entered against a receiver or conservator for the  
18 breach of an agreement executed or approved in  
19 writing by such receiver or conservator after the  
20 date of its appointment, shall be paid as an ad-  
21 ministrative expense of the receiver or conser-  
22 vator.

23 “(B) NO LIMITATION OF POWER.—Nothing  
24 in this paragraph shall be construed to limit the  
25 power of a receiver or conservator to exercise



1 any rights under contract or law, including to  
2 terminate, breach, cancel, or otherwise dis-  
3 continue such agreement.

4 “(19) GENERAL EXCEPTIONS.—

5 “(A) LIMITATIONS.—The rights of a con-  
6 servator or receiver appointed under this section  
7 shall be subject to the limitations on the powers  
8 of a receiver under sections 402 through 407 of  
9 the Federal Deposit Insurance Corporation Im-  
10 provement Act of 1991 (12 U.S.C. 4402  
11 through 4407).

12 “(B) MORTGAGES HELD IN TRUST.—

13 “(i) IN GENERAL.—Any mortgage,  
14 pool of mortgages, or interest in a pool of  
15 mortgages, held in trust, custodial, or  
16 agency capacity by a regulated entity for  
17 the benefit of persons other than the regu-  
18 lated entity shall not be available to satisfy  
19 the claims of creditors generally.

20 “(ii) HOLDING OF MORTGAGES.—Any  
21 mortgage, pool of mortgages, or interest in  
22 a pool of mortgages, described under  
23 clause (i) shall be held by the conservator  
24 or receiver appointed under this section for  
25 the beneficial owners of such mortgage,

1 pool of mortgages, or interest in a pool of  
2 mortgages in accordance with the terms of  
3 the agreement creating such trust, custo-  
4 dial, or other agency arrangement.

5 “(iii) LIABILITY OF RECEIVER.—The  
6 liability of a receiver appointed under this  
7 section for damages shall, in the case of  
8 any contingent or unliquidated claim relat-  
9 ing to the mortgages held in trust, be esti-  
10 mated in accordance set forth in the regu-  
11 lations of the Director.

12 “(c) PRIORITY OF EXPENSES AND UNSECURED  
13 CLAIMS.—

14 “(1) IN GENERAL.—Unsecured claims against a  
15 regulated entity, or a receiver, that are proven to the  
16 satisfaction of the receiver shall have priority in the  
17 following order:

18 “(A) Administrative expenses of the re-  
19 ceiver.

20 “(B) Any other general or senior liability  
21 of the regulated entity and claims of other Fed-  
22 eral home loan banks arising from their pay-  
23 ment obligations (including joint and several  
24 payment obligations).

1           “(C) Any obligation subordinated to gen-  
2           eral creditors.

3           “(D) Any obligation to shareholders or  
4           members arising as a result of their status as  
5           shareholder or members.

6           “(2) CREDITORS SIMILARLY SITUATED.—All  
7           creditors that are similarly situated under paragraph  
8           (1) shall be treated in a similar manner, except that  
9           the Agency may make such other payments to credi-  
10          tors necessary to maximize the present value return  
11          from the sale or disposition or such regulated enti-  
12          ty’s assets or to minimize the amount of any loss re-  
13          alized in the resolution of cases so long as all credi-  
14          tors similarly situated receive not less than the  
15          amount provided under subsection (e)(2).

16          “(3) DEFINITION.—The term ‘administrative  
17          expenses of the receiver’ shall include the actual,  
18          necessary costs and expenses incurred by the re-  
19          ceiver in preserving the assets of the regulated entity  
20          or liquidating or otherwise resolving the affairs of  
21          the regulated entity. Such expenses shall include ob-  
22          ligations that are incurred by the receiver after ap-  
23          pointment as receiver that the Director determines  
24          are necessary and appropriate to facilitate the

1 smooth and orderly liquidation or other resolution of  
2 the regulated entity.

3 “(d) PROVISIONS RELATING TO CONTRACTS EN-  
4 TERED INTO BEFORE APPOINTMENT OF CONSERVATOR  
5 OR RECEIVER.—

6 “(1) AUTHORITY TO REPUDIATE CONTRACTS.—

7 In addition to any other rights a conservator or re-  
8 ceiver may have, the conservator or receiver for any  
9 regulated entity may disaffirm or repudiate any con-  
10 tract or lease—

11 “(A) to which such regulated entity is a  
12 party;

13 “(B) the performance of which the conser-  
14 vator or receiver, in its sole discretion, deter-  
15 mines to be burdensome; and

16 “(C) the disaffirmance or repudiation of  
17 which the conservator or receiver determines, in  
18 its sole discretion, will promote the orderly ad-  
19 ministration of the affairs of the regulated enti-  
20 ty.

21 “(2) TIMING OF REPUDIATION.—The conser-  
22 vator or receiver shall determine whether or not to  
23 exercise the rights of repudiation under this sub-  
24 section within a reasonable period following such ap-  
25 pointment.

1           “(3) CLAIMS FOR DAMAGES FOR REPUDI-  
2       ATION.—

3           “(A) IN GENERAL.—Except as otherwise  
4       provided under subparagraph (C) and para-  
5       graphs (4), (5), and (6), the liability of the con-  
6       servator or receiver for the disaffirmance or re-  
7       pudiation of any contract pursuant to para-  
8       graph (1) shall be—

9           “(i) limited to actual direct compen-  
10       satory damages; and

11       “(ii) determined as of—

12           “(I) the date of the appointment  
13       of the conservator or receiver; or

14           “(II) in the case of any contract  
15       or agreement referred to in paragraph  
16       (8), the date of the disaffirmance or  
17       repudiation of such contract or agree-  
18       ment.

19       “(B) NO LIABILITY FOR OTHER DAM-  
20       AGES.—For purposes of subparagraph (A), the  
21       term ‘actual direct compensatory damages’ shall  
22       not include—

23           “(i) punitive or exemplary damages;

24           “(ii) damages for lost profits or op-  
25       portunity; or

1 “(iii) damages for pain and suffering.

2 “(C) MEASURE OF DAMAGES FOR REPUDI-  
3 ATION OF FINANCIAL CONTRACTS.—In the case  
4 of any qualified financial contract or agreement  
5 to which paragraph (8) applies, compensatory  
6 damages shall be—

7 “(i) deemed to include normal and  
8 reasonable costs of cover or other reason-  
9 able measures of damages utilized in the  
10 industries for such contract and agreement  
11 claims; and

12 “(ii) paid in accordance with this sub-  
13 section and subsection (e), except as other-  
14 wise specifically provided in this section.

15 “(4) LEASES UNDER WHICH THE REGULATED  
16 ENTITY IS THE LESSEE.—

17 “(A) IN GENERAL.—If the conservator or  
18 receiver disaffirms or repudiates a lease under  
19 which the regulated entity was the lessee, the  
20 conservator or receiver shall not be liable for  
21 any damages (other than damages determined  
22 under subparagraph (B)) for the disaffirmance  
23 or repudiation of such lease.

24 “(B) PAYMENTS OF RENT.—Notwith-  
25 standing subparagraph (A), the lessor under a

1           lease to which that subparagraph applies  
2           shall—

3                   “(i) be entitled to the contractual rent  
4           accruing before the later of the date—

5                           “(I) the notice of disaffirmance  
6                           or repudiation is mailed; or

7                                   “(II) the disaffirmance or repudi-  
8                           ation becomes effective, unless the les-  
9                           sor is in default or breach of the  
10                          terms of the lease;

11                           “(ii) have no claim for damages under  
12                          any acceleration clause or other penalty  
13                          provision in the lease; and

14                           “(iii) have a claim for any unpaid  
15                          rent, subject to all appropriate offsets and  
16                          defenses, due as of the date of the appoint-  
17                          ment, which shall be paid in accordance  
18                          with this subsection and subsection (e).

19                   “(5) LEASES UNDER WHICH THE REGULATED  
20           ENTITY IS THE LESSOR.—

21                           “(A) IN GENERAL.—If the conservator or  
22                          receiver repudiates an unexpired written lease  
23                          of real property of the regulated entity under  
24                          which the regulated entity is the lessor and the  
25                          lessee is not, as of the date of such repudiation,

1 in default, the lessee under such lease may ei-  
2 ther—

3 “(i) treat the lease as terminated by  
4 such repudiation; or

5 “(ii) remain in possession of the lease-  
6 hold interest for the balance of the term of  
7 the lease, unless the lessee defaults under  
8 the terms of the lease after the date of  
9 such repudiation.

10 “(B) PROVISIONS APPLICABLE TO LESSEE  
11 REMAINING IN POSSESSION.—If any lessee  
12 under a lease described under subparagraph (A)  
13 remains in possession of a leasehold interest  
14 under clause (ii) of such subparagraph—

15 “(i) the lessee—

16 “(I) shall continue to pay the  
17 contractual rent pursuant to the  
18 terms of the lease after the date of  
19 the repudiation of such lease; and

20 “(II) may offset against any rent  
21 payment which accrues after the date  
22 of the repudiation of the lease, and  
23 any damages which accrue after such  
24 date due to the nonperformance of



1                   any obligation of the regulated entity  
2                   under the lease after such date; and  
3                   “(ii) the conservator or receiver shall  
4                   not be liable to the lessee for any damages  
5                   arising after such date as a result of the  
6                   repudiation other than the amount of any  
7                   offset allowed under clause (i)(II).

8                   “(6) CONTRACTS FOR THE SALE OF REAL  
9                   PROPERTY.—

10                   “(A) IN GENERAL.—If the conservator or  
11                   receiver repudiates any contract for the sale of  
12                   real property and the purchaser of such real  
13                   property under such contract is in possession,  
14                   and is not, as of the date of such repudiation,  
15                   in default, such purchaser may either—

16                   “(i) treat the contract as terminated  
17                   by such repudiation; or

18                   “(ii) remain in possession of such real  
19                   property.

20                   “(B) PROVISIONS APPLICABLE TO PUR-  
21                   CHASER REMAINING IN POSSESSION.—If any  
22                   purchaser of real property under any contract  
23                   described under subparagraph (A) remains in  
24                   possession of such property under clause (ii) of  
25                   such subparagraph—

1 “(i) the purchaser—

2 “(I) shall continue to make all  
3 payments due under the contract after  
4 the date of the repudiation of the con-  
5 tract; and

6 “(II) may offset against any such  
7 payments any damages which accrue  
8 after such date due to the non-  
9 performance (after such date) of any  
10 obligation of the regulated entity  
11 under the contract; and

12 “(ii) the conservator or receiver  
13 shall—

14 “(I) not be liable to the pur-  
15 chaser for any damages arising after  
16 such date as a result of the repudi-  
17 ation other than the amount of any  
18 offset allowed under clause (i)(II);

19 “(II) deliver title to the pur-  
20 chaser in accordance with the provi-  
21 sions of the contract; and

22 “(III) have no obligation under  
23 the contract other than the perform-  
24 ance required under subclause (II).

25 “(C) ASSIGNMENT AND SALE ALLOWED.—

1                   “(i) IN GENERAL.—No provision of  
2                   this paragraph shall be construed as lim-  
3                   iting the right of the conservator or re-  
4                   ceiver to assign the contract described  
5                   under subparagraph (A), and sell the prop-  
6                   erty subject to the contract and the provi-  
7                   sions of this paragraph.

8                   “(ii) NO LIABILITY AFTER ASSIGN-  
9                   MENT AND SALE.—If an assignment and  
10                  sale described under clause (i) is con-  
11                  summated, the conservator or receiver  
12                  shall have no further liability under the  
13                  contract described under subparagraph  
14                  (A), or with respect to the real property  
15                  which was the subject of such contract.

16                  “(7) PROVISIONS APPLICABLE TO SERVICE CON-  
17                  TRACTS.—

18                  “(A) SERVICES PERFORMED BEFORE AP-  
19                  POINTMENT.—In the case of any contract for  
20                  services between any person and any regulated  
21                  entity for which the Agency has been appointed  
22                  conservator or receiver, any claim of such per-  
23                  son for services performed before the appoint-  
24                  ment of the conservator or the receiver shall  
25                  be—

1                   “(i) a claim to be paid in accordance  
2                   with subsections (b) and (e); and

3                   “(ii) deemed to have arisen as of the  
4                   date the conservator or receiver was ap-  
5                   pointed.

6                   “(B) SERVICES PERFORMED AFTER AP-  
7                   POINTMENT AND PRIOR TO REPUDIATION.—If,  
8                   in the case of any contract for services de-  
9                   scribed under subparagraph (A), the conser-  
10                  vator or receiver accepts performance by the  
11                  other person before the conservator or receiver  
12                  makes any determination to exercise the right  
13                  of repudiation of such contract under this sec-  
14                  tion—

15                  “(i) the other party shall be paid  
16                  under the terms of the contract for the  
17                  services performed; and

18                  “(ii) the amount of such payment  
19                  shall be treated as an administrative ex-  
20                  pense of the conservatorship or receiver-  
21                  ship.

22                  “(C) ACCEPTANCE OF PERFORMANCE NO  
23                  BAR TO SUBSEQUENT REPUDIATION.—The ac-  
24                  ceptance by any conservator or receiver of serv-  
25                  ices referred to under subparagraph (B) in con-

1 nection with a contract described in such sub-  
2 paragraph shall not affect the right of the con-  
3 servator or receiver to repudiate such contract  
4 under this section at any time after such per-  
5 formance.

6 “(8) CERTAIN QUALIFIED FINANCIAL CON-  
7 TRACTS.—

8 “(A) RIGHTS OF PARTIES TO CON-  
9 TRACTS.—Subject to paragraphs (9) and (10)  
10 and notwithstanding any other provision of this  
11 Act, any other Federal law, or the law of any  
12 State, no person shall be stayed or prohibited  
13 from exercising—

14 “(i) any right such person has to  
15 cause the termination, liquidation, or accel-  
16 eration of any qualified financial contract  
17 with a regulated entity that arises upon  
18 the appointment of the Agency as receiver  
19 for such regulated entity at any time after  
20 such appointment;

21 “(ii) any right under any security  
22 agreement or arrangement or other credit  
23 enhancement relating to one or more quali-  
24 fied financial contracts described in clause  
25 (i); or

1           “(iii) any right to offset or net out  
2           any termination value, payment amount, or  
3           other transfer obligation arising under or  
4           in connection with 1 or more contracts and  
5           agreements described in clause (i), includ-  
6           ing any master agreement for such con-  
7           tracts or agreements.

8           “(B) APPLICABILITY OF OTHER PROVI-  
9           SIONS.—Paragraph (10) of subsection (b) shall  
10          apply in the case of any judicial action or pro-  
11          ceeding brought against any receiver referred to  
12          under subparagraph (A), or the regulated entity  
13          for which such receiver was appointed, by any  
14          party to a contract or agreement described  
15          under subparagraph (A)(i) with such regulated  
16          entity.

17          “(C) CERTAIN TRANSFERS NOT AVOID-  
18          ABLE.—

19                 “(i) IN GENERAL.—Notwithstanding  
20                 paragraph (11) or any other Federal or  
21                 State laws relating to the avoidance of  
22                 preferential or fraudulent transfers, the  
23                 Agency, whether acting as such or as con-  
24                 servator or receiver of a regulated entity,  
25                 may not avoid any transfer of money or

1 other property in connection with any  
2 qualified financial contract with a regu-  
3 lated entity.

4 “(ii) EXCEPTION FOR CERTAIN  
5 TRANSFERS.—Clause (i) shall not apply to  
6 any transfer of money or other property in  
7 connection with any qualified financial con-  
8 tract with a regulated entity if the Agency  
9 determines that the transferee had actual  
10 intent to hinder, delay, or defraud such  
11 regulated entity, the creditors of such reg-  
12 ulated entity, or any conservator or re-  
13 ceiver appointed for such regulated entity.

14 “(D) CERTAIN CONTRACTS AND AGREE-  
15 MENTS DEFINED.—In this subsection:

16 “(i) QUALIFIED FINANCIAL CON-  
17 TRACT.—The term ‘qualified financial con-  
18 tract’ means any securities contract, com-  
19 modity contract, forward contract, repur-  
20 chase agreement, swap agreement, and any  
21 similar agreement that the Agency deter-  
22 mines by regulation, resolution, or order to  
23 be a qualified financial contract for pur-  
24 poses of this paragraph.

1                   “(ii) SECURITIES CONTRACT.—The  
2 term ‘securities contract’—

3                   “(I) means a contract for the  
4 purchase, sale, or loan of a security, a  
5 certificate of deposit, a mortgage loan,  
6 or any interest in a mortgage loan, a  
7 group or index of securities, certifi-  
8 cates of deposit, or mortgage loans or  
9 interests therein (including any inter-  
10 est therein or based on the value  
11 thereof) or any option on any of the  
12 foregoing, including any option to  
13 purchase or sell any such security,  
14 certificate of deposit, mortgage loan,  
15 interest, group or index, or option,  
16 and including any repurchase or re-  
17 verse repurchase transaction on any  
18 such security, certificate of deposit,  
19 mortgage loan, interest, group or  
20 index, or option;

21                   “(II) does not include any pur-  
22 chase, sale, or repurchase obligation  
23 under a participation in a commercial  
24 mortgage loan unless the Agency de-  
25 termines by regulation, resolution, or



1 order to include any such agreement  
2 within the meaning of such term;

3 “(III) means any option entered  
4 into on a national securities exchange  
5 relating to foreign currencies;

6 “(IV) means the guarantee by or  
7 to any securities clearing agency of  
8 any settlement of cash, securities, cer-  
9 tificates of deposit, mortgage loans or  
10 interests therein, group or index of se-  
11 curities, certificates of deposit, or  
12 mortgage loans or interests therein  
13 (including any interest therein or  
14 based on the value thereof) or option  
15 on any of the foregoing, including any  
16 option to purchase or sell any such se-  
17 curity, certificate of deposit, mortgage  
18 loan, interest, group or index, or op-  
19 tion;

20 “(V) means any margin loan;

21 “(VI) means any other agree-  
22 ment or transaction that is similar to  
23 any agreement or transaction referred  
24 to in this clause;

1           “(VII) means any combination of  
2           the agreements or transactions re-  
3           ferred to in this clause;

4           “(VIII) means any option to  
5           enter into any agreement or trans-  
6           action referred to in this clause;

7           “(IX) means a master agreement  
8           that provides for an agreement or  
9           transaction referred to in subclause  
10          (I), (III), (IV), (V), (VI), (VII), or  
11          (VIII), together with all supplements  
12          to any such master agreement, with-  
13          out regard to whether the master  
14          agreement provides for an agreement  
15          or transaction that is not a securities  
16          contract under this clause, except that  
17          the master agreement shall be consid-  
18          ered to be a securities contract under  
19          this clause only with respect to each  
20          agreement or transaction under the  
21          master agreement that is referred to  
22          in subclause (I), (III), (IV), (V), (VI),  
23          (VII), or (VIII); and

24          “(X) means any security agree-  
25          ment or arrangement or other credit

1 enhancement related to any agree-  
2 ment or transaction referred to in this  
3 clause, including any guarantee or re-  
4 imbursement obligation in connection  
5 with any agreement or transaction re-  
6 ferred to in this clause.

7 “(iii) COMMODITY CONTRACT.—The  
8 term ‘commodity contract’ means—

9 “(I) with respect to a futures  
10 commission merchant, a contract for  
11 the purchase or sale of a commodity  
12 for future delivery on, or subject to  
13 the rules of, a contract market or  
14 board of trade;

15 “(II) with respect to a foreign fu-  
16 tures commission merchant, a foreign  
17 future;

18 “(III) with respect to a leverage  
19 transaction merchant, a leverage  
20 transaction;

21 “(IV) with respect to a clearing  
22 organization, a contract for the pur-  
23 chase or sale of a commodity for fu-  
24 ture delivery on, or subject to the  
25 rules of, a contract market or board

1 of trade that is cleared by such clear-  
2 ing organization, or commodity option  
3 traded on, or subject to the rules of,  
4 a contract market or board of trade  
5 that is cleared by such clearing orga-  
6 nization;

7 “(V) with respect to a commodity  
8 options dealer, a commodity option;

9 “(VI) any other agreement or  
10 transaction that is similar to any  
11 agreement or transaction referred to  
12 in this clause;

13 “(VII) any combination of the  
14 agreements or transactions referred to  
15 in this clause;

16 “(VIII) any option to enter into  
17 any agreement or transaction referred  
18 to in this clause;

19 “(IX) a master agreement that  
20 provides for an agreement or trans-  
21 action referred to in subclause (I),  
22 (II), (III), (IV), (V), (VI), (VII), or  
23 (VIII), together with all supplements  
24 to any such master agreement, with-  
25 out regard to whether the master

1 agreement provides for an agreement  
2 or transaction that is not a com-  
3 modity contract under this clause, ex-  
4 cept that the master agreement shall  
5 be considered to be a commodity con-  
6 tract under this clause only with re-  
7 spect to each agreement or trans-  
8 action under the master agreement  
9 that is referred to in subclause (I),  
10 (II), (III), (IV), (V), (VI), (VII), or  
11 (VIII); or

12 “(X) any security agreement or  
13 arrangement or other credit enhance-  
14 ment related to any agreement or  
15 transaction referred to in this clause,  
16 including any guarantee or reimburse-  
17 ment obligation in connection with  
18 any agreement or transaction referred  
19 to in this clause.

20 “(iv) FORWARD CONTRACT.—The  
21 term ‘forward contract’ means—

22 “(I) a contract (other than a  
23 commodity contract) for the purchase,  
24 sale, or transfer of a commodity or  
25 any similar good, article, service,

1 right, or interest which is presently or  
2 in the future becomes the subject of  
3 dealing in the forward contract trade,  
4 or product or byproduct thereof, with  
5 a maturity date more than 2 days  
6 after the date the contract is entered  
7 into, including, a repurchase trans-  
8 action, reverse repurchase transaction,  
9 consignment, lease, swap, hedge  
10 transaction, deposit, loan, option, allo-  
11 cated transaction, unallocated trans-  
12 action, or any other similar agree-  
13 ment;

14 “(II) any combination of agree-  
15 ments or transactions referred to in  
16 subclauses (I) and (III);

17 “(III) any option to enter into  
18 any agreement or transaction referred  
19 to in subclause (I) or (II);

20 “(IV) a master agreement that  
21 provides for an agreement or trans-  
22 action referred to in subclauses (I),  
23 (II), or (III), together with all supple-  
24 ments to any such master agreement,  
25 without regard to whether the master

1 agreement provides for an agreement  
2 or transaction that is not a forward  
3 contract under this clause, except that  
4 the master agreement shall be consid-  
5 ered to be a forward contract under  
6 this clause only with respect to each  
7 agreement or transaction under the  
8 master agreement that is referred to  
9 in subclause (I), (II), or (III); or

10 “(V) any security agreement or  
11 arrangement or other credit enhance-  
12 ment related to any agreement or  
13 transaction referred to in subclause  
14 (I), (II), (III), or (IV), including any  
15 guarantee or reimbursement obliga-  
16 tion in connection with any agreement  
17 or transaction referred to in any such  
18 subclause.

19 “(v) REPURCHASE AGREEMENT.—The  
20 term ‘repurchase agreement’ (which defini-  
21 tion also applies to a reverse repurchase  
22 agreement)—

23 “(I) means an agreement, includ-  
24 ing related terms, which provides for  
25 the transfer of one or more certifi-

1           cates of deposit, mortgage-related se-  
2           curities (as such term is defined in  
3           the Securities Exchange Act of 1934),  
4           mortgage loans, interests in mortgage-  
5           related securities or mortgage loans,  
6           eligible bankers' acceptances, qualified  
7           foreign government securities or secu-  
8           rities that are direct obligations of, or  
9           that are fully guaranteed by, the  
10          United States or any agency of the  
11          United States against the transfer of  
12          funds by the transferee of such certifi-  
13          cates of deposit, eligible bankers' ac-  
14          ceptances, securities, mortgage loans,  
15          or interests with a simultaneous  
16          agreement by such transferee to  
17          transfer to the transferor thereof cer-  
18          tificates of deposit, eligible bankers'  
19          acceptances, securities, mortgage  
20          loans, or interests as described above,  
21          at a date certain not later than 1 year  
22          after such transfers or on demand,  
23          against the transfer of funds, or any  
24          other similar agreement;



1 “(II) does not include any repur-  
2 chase obligation under a participation  
3 in a commercial mortgage loan unless  
4 the Agency determines by regulation,  
5 resolution, or order to include any  
6 such participation within the meaning  
7 of such term;

8 “(III) means any combination of  
9 agreements or transactions referred to  
10 in subclauses (I) and (IV);

11 “(IV) means any option to enter  
12 into any agreement or transaction re-  
13 ferred to in subclause (I) or (III);

14 “(V) means a master agreement  
15 that provides for an agreement or  
16 transaction referred to in subclause  
17 (I), (III), or (IV), together with all  
18 supplements to any such master  
19 agreement, without regard to whether  
20 the master agreement provides for an  
21 agreement or transaction that is not a  
22 repurchase agreement under this  
23 clause, except that the master agree-  
24 ment shall be considered to be a re-  
25 purchase agreement under this sub-

1 clause only with respect to each agree-  
2 ment or transaction under the master  
3 agreement that is referred to in sub-  
4 clause (I), (III), or (IV); and

5 “(VI) means any security agree-  
6 ment or arrangement or other credit  
7 enhancement related to any agree-  
8 ment or transaction referred to in  
9 subclause (I), (III), (IV), or (V), in-  
10 cluding any guarantee or reimburse-  
11 ment obligation in connection with  
12 any agreement or transaction referred  
13 to in any such subclause.

14 For purposes of this clause, the term  
15 ‘qualified foreign government security’  
16 means a security that is a direct obligation  
17 of, or that is fully guaranteed by, the cen-  
18 tral government of a member of the Orga-  
19 nization for Economic Cooperation and  
20 Development (as determined by regulation  
21 or order adopted by the appropriate Fed-  
22 eral banking authority).

23 “(vi) SWAP AGREEMENT.—The term  
24 ‘swap agreement’ means—

1           “(I) any agreement, including the  
2           terms and conditions incorporated by  
3           reference in any such agreement,  
4           which is an interest rate swap, option,  
5           future, or forward agreement, includ-  
6           ing a rate floor, rate cap, rate collar,  
7           cross-currency rate swap, and basis  
8           swap; a spot, same day-tomorrow, to-  
9           morrow-next, forward, or other for-  
10          eign exchange or precious metals  
11          agreement; a currency swap, option,  
12          future, or forward agreement; an eq-  
13          uity index or equity swap, option, fu-  
14          ture, or forward agreement; a debt  
15          index or debt swap, option, future, or  
16          forward agreement; a total return,  
17          credit spread or credit swap, option,  
18          future, or forward agreement; a com-  
19          modity index or commodity swap, op-  
20          tion, future, or forward agreement; or  
21          a weather swap, weather derivative, or  
22          weather option;

23          “(II) any agreement or trans-  
24          action that is similar to any other  
25          agreement or transaction referred to

1 in this clause and that is of a type  
2 that has been, is presently, or in the  
3 future becomes, the subject of recur-  
4 rent dealings in the swap markets (in-  
5 cluding terms and conditions incor-  
6 porated by reference in such agree-  
7 ment) and that is a forward, swap, fu-  
8 ture, or option on one or more rates,  
9 currencies, commodities, equity securi-  
10 ties or other equity instruments, debt  
11 securities or other debt instruments,  
12 quantitative measures associated with  
13 an occurrence, extent of an occur-  
14 rence, or contingency associated with  
15 a financial, commercial, or economic  
16 consequence, or economic or financial  
17 indices or measures of economic or fi-  
18 nancial risk or value;

19 “(III) any combination of agree-  
20 ments or transactions referred to in  
21 this clause;

22 “(IV) any option to enter into  
23 any agreement or transaction referred  
24 to in this clause;

1           “(V) a master agreement that  
2 provides for an agreement or trans-  
3 action referred to in subclause (I),  
4 (II), (III), or (IV), together with all  
5 supplements to any such master  
6 agreement, without regard to whether  
7 the master agreement contains an  
8 agreement or transaction that is not a  
9 swap agreement under this clause, ex-  
10 cept that the master agreement shall  
11 be considered to be a swap agreement  
12 under this clause only with respect to  
13 each agreement or transaction under  
14 the master agreement that is referred  
15 to in subclause (I), (II), (III), or (IV);  
16 and

17           “(VI) any security agreement or  
18 arrangement or other credit enhance-  
19 ment related to any agreements or  
20 transactions referred to in subclause  
21 (I), (II), (III), (IV), or (V), including  
22 any guarantee or reimbursement obli-  
23 gation in connection with any agree-  
24 ment or transaction referred to in any  
25 such subclause.

1 Such term is applicable for purposes of  
2 this subsection only and shall not be con-  
3 strued or applied so as to challenge or af-  
4 fect the characterization, definition, or  
5 treatment of any swap agreement under  
6 any other statute, regulation, or rule, in-  
7 cluding the Securities Act of 1933, the Se-  
8 curities Exchange Act of 1934, the Public  
9 Utility Holding Company Act of 1935, the  
10 Trust Indenture Act of 1939, the Invest-  
11 ment Company Act of 1940, the Invest-  
12 ment Advisers Act of 1940, the Securities  
13 Investor Protection Act of 1970, the Com-  
14 modity Exchange Act, the Gramm-Leach-  
15 Bliley Act, and the Legal Certainty for  
16 Bank Products Act of 2000.

17 “(vii) TREATMENT OF MASTER  
18 AGREEMENT AS ONE AGREEMENT.—Any  
19 master agreement for any contract or  
20 agreement described in any preceding  
21 clause of this subparagraph (or any master  
22 agreement for such master agreement or  
23 agreements), together with all supplements  
24 to such master agreement, shall be treated  
25 as a single agreement and a single quali-

1           fied financial contract. If a master agree-  
2           ment contains provisions relating to agree-  
3           ments or transactions that are not them-  
4           selves qualified financial contracts, the  
5           master agreement shall be deemed to be a  
6           qualified financial contract only with re-  
7           spect to those transactions that are them-  
8           selves qualified financial contracts.

9           “(viii) TRANSFER.—The term ‘trans-  
10          fer’ means every mode, direct or indirect,  
11          absolute or conditional, voluntary or invol-  
12          untary, of disposing of or parting with  
13          property or with an interest in property,  
14          including retention of title as a security in-  
15          terest and foreclosure of the regulated en-  
16          tity’s equity of redemption.

17          “(E) CERTAIN PROTECTIONS IN EVENT OF  
18          APPOINTMENT OF CONSERVATOR.—Notwith-  
19          standing any other provision of this Act (other  
20          than paragraph (13) of this subsection), any  
21          other Federal law, or the law of any State, no  
22          person shall be stayed or prohibited from exer-  
23          cising—

24                 “(i) any right such person has to  
25                 cause the termination, liquidation, or accel-

1           eration of any qualified financial contract  
2           with a regulated entity in a conservator-  
3           ship based upon a default under such fi-  
4           nancial contract which is enforceable under  
5           applicable noninsolvency law;

6           “(ii) any right under any security  
7           agreement or arrangement or other credit  
8           enhancement relating to one or more such  
9           qualified financial contracts; or

10          “(iii) any right to offset or net out  
11          any termination values, payment amounts,  
12          or other transfer obligations arising under  
13          or in connection with such qualified finan-  
14          cial contracts.

15          “(F) CLARIFICATION.—No provision of law  
16          shall be construed as limiting the right or  
17          power of the Agency, or authorizing any court  
18          or agency to limit or delay, in any manner, the  
19          right or power of the Agency to transfer any  
20          qualified financial contract in accordance with  
21          paragraphs (9) and (10) of this subsection or to  
22          disaffirm or repudiate any such contract in ac-  
23          cordance with subsection (d)(1) of this section.

24          “(G) WALKAWAY CLAUSES NOT EFFEC-  
25          TIVE.—



1           “(i) IN GENERAL.—Notwithstanding  
2           the provisions of subparagraphs (A) and  
3           (E), and sections 403 and 404 of the Fed-  
4           eral Deposit Insurance Corporation Im-  
5           provement Act of 1991, no walkaway  
6           clause shall be enforceable in a qualified fi-  
7           nancial contract of a regulated entity in  
8           default.

9           “(ii) WALKAWAY CLAUSE DEFINED.—  
10          For purposes of this subparagraph, the  
11          term ‘walkaway clause’ means a provision  
12          in a qualified financial contract that, after  
13          calculation of a value of a party’s position  
14          or an amount due to or from 1 of the par-  
15          ties in accordance with its terms upon ter-  
16          mination, liquidation, or acceleration of the  
17          qualified financial contract, either does not  
18          create a payment obligation of a party or  
19          extinguishes a payment obligation of a  
20          party in whole or in part solely because of  
21          such party’s status as a nondefaulting  
22          party.

23          “(9) TRANSFER OF QUALIFIED FINANCIAL CON-  
24          TRACTS.—In making any transfer of assets or liabil-  
25          ities of a regulated entity in default which includes

1       any qualified financial contract, the conservator or  
2       receiver for such regulated entity shall either—

3               “(A) transfer to 1 person—

4                       “(i) all qualified financial contracts  
5                       between any person (or any affiliate of  
6                       such person) and the regulated entity in  
7                       default;

8                       “(ii) all claims of such person (or any  
9                       affiliate of such person) against such regu-  
10                      lated entity under any such contract (other  
11                      than any claim which, under the terms of  
12                      any such contract, is subordinated to the  
13                      claims of general unsecured creditors of  
14                      such regulated entity);

15                     “(iii) all claims of such regulated enti-  
16                     ty against such person (or any affiliate of  
17                     such person) under any such contract; and

18                     “(iv) all property securing or any  
19                     other credit enhancement for any contract  
20                     described in clause (i) or any claim de-  
21                     scribed in clause (ii) or (iii) under any  
22                     such contract; or

23               “(B) transfer none of the financial con-  
24       tracts, claims, or property referred to under

1           subparagraph (A) (with respect to such person  
2           and any affiliate of such person).

3           “(10) NOTIFICATION OF TRANSFER.—

4                 “(A) IN GENERAL.—If—

5                     “(i) the conservator or receiver for a  
6                     regulated entity in default makes any  
7                     transfer of the assets and liabilities of such  
8                     regulated entity, and

9                     “(ii) the transfer includes any quali-  
10                    fied financial contract,

11           the conservator or receiver shall notify any per-  
12           son who is a party to any such contract of such  
13           transfer by 5:00 p.m. (eastern time) on the  
14           business day following the date of the appoint-  
15           ment of the receiver in the case of a receiver-  
16           ship, or the business day following such trans-  
17           fer in the case of a conservatorship.

18                 “(B) CERTAIN RIGHTS NOT ENFORCE-  
19           ABLE.—

20                     “(i) RECEIVERSHIP.—A person who is  
21                     a party to a qualified financial contract  
22                     with a regulated entity may not exercise  
23                     any right that such person has to termi-  
24                     nate, liquidate, or net such contract under  
25                     paragraph (8)(A) of this subsection or sec-

tion 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a receiver for the regulated entity (or the insolvency or financial condition of the regulated entity for which the receiver has been appointed)—

“(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or

“(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

“(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with a regulated entity may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a conservator

1 for the regulated entity (or the insolvency  
2 or financial condition of the regulated enti-  
3 ty for which the conservator has been ap-  
4 pointed).

5 “(iii) NOTICE.—For purposes of this  
6 paragraph, the Agency as receiver or con-  
7 servator of a regulated entity shall be  
8 deemed to have notified a person who is a  
9 party to a qualified financial contract with  
10 such regulated entity if the Agency has  
11 taken steps reasonably calculated to pro-  
12 vide notice to such person by the time  
13 specified in subparagraph (A).

14 “(C) BUSINESS DAY DEFINED.—For pur-  
15 poses of this paragraph, the term ‘business day’  
16 means any day other than any Saturday, Sun-  
17 day, or any day on which either the New York  
18 Stock Exchange or the Federal Reserve Bank  
19 of New York is closed.

20 “(11) DISAFFIRMANCE OR REPUDIATION OF  
21 QUALIFIED FINANCIAL CONTRACTS.—In exercising  
22 the rights of disaffirmance or repudiation of a con-  
23 servator or receiver with respect to any qualified fi-  
24 nancial contract to which a regulated entity is a

1 party, the conservator or receiver for such institution  
2 shall either—

3 “(A) disaffirm or repudiate all qualified fi-  
4 nancial contracts between—

5 “(i) any person or any affiliate of  
6 such person; and

7 “(ii) the regulated entity in default; or

8 “(B) disaffirm or repudiate none of the  
9 qualified financial contracts referred to in sub-  
10 paragraph (A) (with respect to such person or  
11 any affiliate of such person).

12 “(12) CERTAIN SECURITY INTERESTS NOT  
13 AVOIDABLE.—No provision of this subsection shall  
14 be construed as permitting the avoidance of any le-  
15 gally enforceable or perfected security interest in any  
16 of the assets of any regulated entity, except where  
17 such an interest is taken in contemplation of the in-  
18 solvency of the regulated entity, or with the intent  
19 to hinder, delay, or defraud the regulated entity or  
20 the creditors of such regulated entity.

21 “(13) AUTHORITY TO ENFORCE CONTRACTS.—

22 “(A) IN GENERAL.—Notwithstanding any  
23 provision of a contract providing for termi-  
24 nation, default, acceleration, or exercise of  
25 rights upon, or solely by reason of, insolvency

1 or the appointment of a conservator or receiver,  
2 the conservator or receiver may enforce any  
3 contract or regulated entity bond entered into  
4 by the regulated entity.

5 “(B) CERTAIN RIGHTS NOT AFFECTED.—

6 No provision of this paragraph may be con-  
7 strued as impairing or affecting any right of the  
8 conservator or receiver to enforce or recover  
9 under a director’s or officer’s liability insurance  
10 contract or surety bond under other applicable  
11 law.

12 “(C) CONSENT REQUIREMENT.—

13 “(i) IN GENERAL.—Except as other-  
14 wise provided under this section, no person  
15 may exercise any right or power to termi-  
16 nate, accelerate, or declare a default under  
17 any contract to which a regulated entity is  
18 a party, or to obtain possession of or exer-  
19 cise control over any property of the regu-  
20 lated entity, or affect any contractual  
21 rights of the regulated entity, without the  
22 consent of the conservator or receiver, as  
23 appropriate, for a period of—

24 “(I) 45 days after the date of ap-  
25 pointment of a conservator; or

1 “(II) 90 days after the date of  
2 appointment of a receiver.

3 “(ii) EXCEPTIONS.—This paragraph  
4 shall—

5 “(I) not apply to a director’s or  
6 officer’s liability insurance contract;

7 “(II) not apply to the rights of  
8 parties to any qualified financial con-  
9 tracts under subsection (d)(8); and

10 “(III) not be construed as per-  
11 mitting the conservator or receiver to  
12 fail to comply with otherwise enforce-  
13 able provisions of such contracts.

14 “(14) SAVINGS CLAUSE.—The meanings of  
15 terms used in this subsection are applicable for pur-  
16 poses of this subsection only, and shall not be con-  
17 strued or applied so as to challenge or affect the  
18 characterization, definition, or treatment of any  
19 similar terms under any other statute, regulation, or  
20 rule, including the Gramm-Leach-Bliley Act, the  
21 Legal Certainty for Bank Products Act of 2000, the  
22 securities laws (as that term is defined in section  
23 3(a)(47) of the Securities Exchange Act of 1934),  
24 and the Commodity Exchange Act.



1           “(15) EXCEPTION FOR FEDERAL RESERVE AND  
2           FEDERAL HOME LOAN BANKS.—No provision of this  
3           subsection shall apply with respect to—

4                   “(A) any extension of credit from any Fed-  
5           eral home loan bank or Federal Reserve Bank  
6           to any regulated entity; or

7                   “(B) any security interest in the assets of  
8           the regulated entity securing any such extension  
9           of credit.

10          “(e) VALUATION OF CLAIMS IN DEFAULT.—

11               “(1) IN GENERAL.—Notwithstanding any other  
12          provision of Federal law or the law of any State, and  
13          regardless of the method which the Agency deter-  
14          mines to utilize with respect to a regulated entity in  
15          default or in danger of default, including trans-  
16          actions authorized under subsection (i), this sub-  
17          section shall govern the rights of the creditors of  
18          such regulated entity.

19               “(2) MAXIMUM LIABILITY.—The maximum li-  
20          ability of the Agency, acting as receiver or in any  
21          other capacity, to any person having a claim against  
22          the receiver or the regulated entity for which such  
23          receiver is appointed shall equal the lesser of—

24                   “(A) the amount such claimant would have  
25          received if the Agency had liquidated the assets

1           and liabilities of such regulated entity without  
2           exercising the authority of the Agency under  
3           subsection (i) of this section; or

4                 “(B) the amount of proceeds realized from  
5           the performance of contracts or sale of the as-  
6           sets of the regulated entity.

7         “(f) LIMITATION ON COURT ACTION.—Except as  
8         provided in this section or at the request of the Director,  
9         no court may take any action to restrain or affect the exer-  
10        cise of powers or functions of the Agency as a conservator  
11        or a receiver.

12       “(g) LIABILITY OF DIRECTORS AND OFFICERS.—

13                 “(1) IN GENERAL.—A director or officer of a  
14        regulated entity may be held personally liable for  
15        monetary damages in any civil action by, on behalf  
16        of, or at the request or direction of the Agency,  
17        which action is prosecuted wholly or partially for the  
18        benefit of the Agency—

19                 “(A) acting as conservator or receiver of  
20        such regulated entity, or

21                 “(B) acting based upon a suit, claim, or  
22        cause of action purchased from, assigned by, or  
23        otherwise conveyed by such receiver or conser-  
24        vator,

1       for gross negligence, including any similar conduct  
2       or conduct that demonstrates a greater disregard of  
3       a duty of care (than gross negligence) including in-  
4       tentional tortious conduct, as such terms are defined  
5       and determined under applicable State law.

6           “(2) NO LIMITATION.—Nothing in this para-  
7       graph shall impair or affect any right of the Agency  
8       under other applicable law.

9           “(h) DAMAGES.—In any proceeding related to any  
10      claim against a director, officer, employee, agent, attorney,  
11      accountant, appraiser, or any other party employed by or  
12      providing services to a regulated entity, recoverable dam-  
13      ages determined to result from the improvident or other-  
14      wise improper use or investment of any assets of the regu-  
15      lated entity shall include principal losses and appropriate  
16      interest.

17          “(i) LIMITED-LIFE REGULATED ENTITIES.—

18           “(1) ORGANIZATION.—

19           “(A) PURPOSE.—If a regulated entity is in  
20      default, or if the Agency anticipates that a reg-  
21      ulated entity will default, the Agency may orga-  
22      nize a limited-life regulated entity with those  
23      powers and attributes of the regulated entity in  
24      default or in danger of default that the Director  
25      determines necessary, subject to the provisions

1 of this subsection. The Director shall grant a  
2 temporary charter to the limited-life regulated  
3 entity, and the limited-life regulated entity shall  
4 operate subject to that charter.

5 “(B) AUTHORITIES.—Upon the creation of  
6 a limited-life regulated entity under subpara-  
7 graph (A), the limited-life regulated entity  
8 may—

9 “(i) assume such liabilities of the reg-  
10 ulated entity that is in default or in danger  
11 of default as the Agency may, in its discre-  
12 tion, determine to be appropriate, provided  
13 that the liabilities assumed shall not exceed  
14 the amount of assets of the limited-life reg-  
15 ulated entity;

16 “(ii) purchase such assets of the regu-  
17 lated entity that is in default, or in danger  
18 of default, as the Agency may, in its dis-  
19 cretion, determine to be appropriate; and

20 “(iii) perform any other temporary  
21 function which the Agency may, in its dis-  
22 cretion, prescribe in accordance with this  
23 section.

24 “(2) CHARTER.—

1           “(A) CONDITIONS.—The Agency may  
2           grant a temporary charter if the Agency deter-  
3           mines that the continued operation of the regu-  
4           lated entity in default or in danger of default  
5           is in the best interest of the national economy  
6           and the housing markets.

7           “(B) TREATMENT AS BEING IN DEFAULT  
8           FOR CERTAIN PURPOSES.—A limited-life regu-  
9           lated entity shall be treated as a regulated enti-  
10          ty in default at such times and for such pur-  
11          poses as the Agency may, in its discretion, de-  
12          termine.

13          “(C) MANAGEMENT.—A limited-life regu-  
14          lated entity, upon the granting of its charter,  
15          shall be under the management of a board of  
16          directors consisting of not fewer than 5 nor  
17          more than 10 members appointed by the Agen-  
18          cy.

19          “(D) BYLAWS.—The board of directors of  
20          a limited-life regulated entity shall adopt such  
21          bylaws as may be approved by the Agency.

22          “(3) CAPITAL STOCK.—No capital stock need  
23          be paid into a limited-life regulated entity by the  
24          Agency.

1           “(4) INVESTMENTS.—Funds of a limited-life  
2 regulated entity shall be kept on hand in cash, in-  
3 vested in obligations of the United States or obliga-  
4 tions guaranteed as to principal and interest by the  
5 United States, or deposited with the Agency, or any  
6 Federal Reserve bank.

7           “(5) EXEMPT STATUS.—Notwithstanding any  
8 other provision of Federal or State law, the limited-  
9 life regulated entity, its franchise, property, and in-  
10 come shall be exempt from all taxation now or here-  
11 after imposed by the United States, by any territory,  
12 dependency, or possession thereof, or by any State,  
13 county, municipality, or local taxing authority.

14           “(6) WINDING UP.—

15           “(A) IN GENERAL.—Subject to subpara-  
16 graph (B), unless Congress authorizes the sale  
17 of the capital stock of the limited-life regulated  
18 entity, not later than 2 years after the date of  
19 its organization, the Agency shall wind up the  
20 affairs of the limited-life regulated entity.

21           “(B) EXTENSION.—The Director may, in  
22 the discretion of the Director, extend the status  
23 of the limited-life regulated entity for 3 addi-  
24 tional 1-year periods.

25           “(7) TRANSFER OF ASSETS AND LIABILITIES.—

1 “(A) IN GENERAL.—

2 “(i) TRANSFER OF ASSETS AND LI-  
3 ABILITIES.—The Agency, as receiver, may  
4 transfer any assets and liabilities of a reg-  
5 ulated entity in default, or in danger of de-  
6 fault, to the limited-life regulated entity in  
7 accordance with paragraph (1).

8 “(ii) SUBSEQUENT TRANSFERS.—At  
9 any time after a charter is transferred to  
10 a limited-life regulated entity, the Agency,  
11 as receiver, may transfer any assets and li-  
12 abilities of such regulated entity in default,  
13 or in danger in default, as the Agency  
14 may, in its discretion, determine to be ap-  
15 propriate in accordance with paragraph  
16 (1).

17 “(iii) EFFECTIVE WITHOUT AP-  
18 PROVAL.—The transfer of any assets or li-  
19 abilities of a regulated entity in default, or  
20 in danger of default, transferred to a lim-  
21 ited-life regulated entity shall be effective  
22 without any further approval under Fed-  
23 eral or State law, assignment, or consent  
24 with respect thereto.

1           “(8) PROCEEDS.—To the extent that available  
2           proceeds from the limited-life regulated entity exceed  
3           amounts required to pay obligations, such proceeds  
4           may be paid to the regulated entity in default, or in  
5           danger of default.

6           “(9) POWERS.—

7                   “(A) IN GENERAL.—Each limited-life regu-  
8           lated entity created under this subsection shall  
9           have all corporate powers of, and be subject to  
10          the same provisions of law as, the regulated en-  
11          tity in default or in danger of default to which  
12          it relates, except that—

13                   “(i) the Agency may—

14                           “(I) remove the directors of a  
15                           limited-life regulated entity; and

16                           “(II) fix the compensation of  
17                           members of the board of directors and  
18                           senior management, as determined by  
19                           the Agency in its discretion, of a lim-  
20                           ited-life regulated entity;

21                   “(ii) the Agency may indemnify the  
22           representatives for purposes of paragraph  
23           (1)(B), and the directors, officers, employ-  
24           ees, and agents of a limited-life regulated



1           entity on such terms as the Agency deter-  
2           mines to be appropriate; and

3           “(iii) the board of directors of a lim-  
4           ited-life regulated entity—

5           “(I) shall elect a chairperson who  
6           may also serve in the position of chief  
7           executive officer, except that such per-  
8           son shall not serve either as chair-  
9           person or as chief executive officer  
10          without the prior approval of the  
11          Agency; and

12          “(II) may appoint a chief execu-  
13          tive officer who is not also the chair-  
14          person, except that such person shall  
15          not serve as chief executive officer  
16          without the prior approval of the  
17          Agency.

18          “(B) STAY OF JUDICIAL ACTION.—Any ju-  
19          dicial action to which a limited-life regulated  
20          entity becomes a party by virtue of its acquisi-  
21          tion of any assets or assumption of any liabil-  
22          ities of a regulated entity in default shall be  
23          stayed from further proceedings for a period of  
24          up to 45 days at the request of the limited-life

1 regulated entity. Such period may be modified  
2 upon the consent of all parties.

3 “(10) OBTAINING OF CREDIT AND INCURRING  
4 OF DEBT.—

5 “(A) IN GENERAL.—The limited-life regu-  
6 lated entity may obtain unsecured credit and  
7 incur unsecured debt in the ordinary course of  
8 business.

9 “(B) INABILITY TO OBTAIN CREDIT.—If  
10 the limited-life regulated entity is unable to ob-  
11 tain unsecured credit the Director may author-  
12 ize the obtaining of credit or the incurring of  
13 debt—

14 “(i) with priority over any or all ad-  
15 ministrative expenses;

16 “(ii) secured by a lien on property  
17 that is not otherwise subject to a lien; or

18 “(iii) secured by a junior lien on prop-  
19 erty that is subject to a lien.

20 “(C) LIMITATIONS.—

21 “(i) IN GENERAL.—The Director,  
22 after notice and a hearing, may authorize  
23 the obtaining of credit or the incurring of  
24 debt secured by a senior or equal lien on  
25 property that is subject to a lien (other

1           than mortgages that collateralize the mort-  
2           gage-backed securities issued or guaran-  
3           teed by the regulated entity) only if—

4                   “(I) the limited-life regulated en-  
5                   tity is unable to obtain such credit  
6                   otherwise; and

7                   “(II) there is adequate protection  
8                   of the interest of the holder of the lien  
9                   on the property which such senior or  
10                  equal lien is proposed to be granted.

11                  “(ii) BURDEN OF PROOF.—In any  
12                  hearing under this subsection, the Director  
13                  has the burden of proof on the issue of  
14                  adequate protection.

15                  “(D) EFFECT ON DEBTS AND LIENS.—The  
16                  reversal or modification on appeal of an author-  
17                  ization under this paragraph to obtain credit or  
18                  incur debt, or of a grant under this section of  
19                  a priority or a lien, does not affect the validity  
20                  of any debt so incurred, or any priority or lien  
21                  so granted, to an entity that extended such  
22                  credit in good faith, whether or not such entity  
23                  knew of the pendency of the appeal, unless such  
24                  authorization and the incurring of such debt, or

1 the granting of such priority or lien, were  
2 stayed pending appeal.

3 “(11) ISSUANCE OF PREFERRED DEBT.—A lim-  
4 ited-life regulated entity may, subject to the ap-  
5 proval of the Director and subject to such terms and  
6 conditions as the Director may prescribe, issue  
7 notes, bonds, or other debt obligations of a class to  
8 which all other debt obligations of the limited-life  
9 regulated entity shall be subordinate in right and  
10 payment.

11 “(12) NO FEDERAL STATUS.—

12 “(A) AGENCY STATUS.—A limited-life reg-  
13 ulated entity is not an agency, establishment, or  
14 instrumentality of the United States.

15 “(B) EMPLOYEE STATUS.—Representa-  
16 tives for purposes of paragraph (1)(B), interim  
17 directors, directors, officers, employees, or  
18 agents of a limited-life regulated entity are not,  
19 solely by virtue of service in any such capacity,  
20 officers or employees of the United States. Any  
21 employee of the Agency or of any Federal in-  
22 strumentality who serves at the request of the  
23 Agency as a representative for purposes of  
24 paragraph (1)(B), interim director, director, of-

1           ficer, employee, or agent of a limited-life regu-  
2           lated entity shall not—

3                   “(i) solely by virtue of service in any  
4                   such capacity lose any existing status as  
5                   an officer or employee of the United States  
6                   for purposes of title 5, United States Code,  
7                   or any other provision of law; or

8                   “(ii) receive any salary or benefits for  
9                   service in any such capacity with respect to  
10                  a limited-life regulated entity in addition to  
11                  such salary or benefits as are obtained  
12                  through employment with the Agency or  
13                  such Federal instrumentality.

14           “(13) ADDITIONAL POWERS.—In addition to  
15           any other powers granted under this subsection, a  
16           limited-life regulated entity may—

17                   “(A) extend a maturity date or change in  
18                   an interest rate or other term of outstanding  
19                   securities;

20                   “(B) issue securities of the limited-life reg-  
21                   ulated entity, for cash, for property, for existing  
22                   securities, or in exchange for claims or inter-  
23                   ests, or for any other appropriate purposes; and

24                   “(C) take any other action not inconsistent  
25                   with this section.

1       “(j) OTHER EXEMPTIONS.—When acting as a re-  
2 ceiver, the following provisions shall apply with respect to  
3 the Agency:

4           “(1) EXEMPTION FROM TAXATION.—The Agen-  
5 cy, including its franchise, its capital, reserves, and  
6 surplus, and its income, shall be exempt from all  
7 taxation imposed by any State, country, munici-  
8 pality, or local taxing authority, except that any real  
9 property of the Agency shall be subject to State, ter-  
10 ritorial, county, municipal, or local taxation to the  
11 same extent according to its value as other real  
12 property is taxed, except that, notwithstanding the  
13 failure of any person to challenge an assessment  
14 under State law of the value of such property, and  
15 the tax thereon, shall be determined as of the period  
16 for which such tax is imposed.

17           “(2) EXEMPTION FROM ATTACHMENT AND  
18 LIENS.—No property of the Agency shall be subject  
19 to levy, attachment, garnishment, foreclosure, or sale  
20 without the consent of the Agency, nor shall any in-  
21 voluntary lien attach to the property of the Agency.

22           “(3) EXEMPTION FROM PENALTIES AND  
23 FINES.—The Agency shall not be liable for any  
24 amounts in the nature of penalties or fines, includ-  
25 ing those arising from the failure of any person to

1       pay any real property, personal property, probate, or  
2       recording tax or any recording or filing fees when  
3       due.

4       “(k) PROHIBITION OF CHARTER REVOCATION.—In  
5       no case may a receiver appointed pursuant to this section  
6       revoke, annul, or terminate the charter of a regulated enti-  
7       ty.”.

8       (b) CONFORMING AMENDMENTS.—

9               (1) HOUSING AND COMMUNITY DEVELOPMENT  
10       ACT OF 1992.—Subtitle B of title XIII of the Hous-  
11       ing and Community Development Act of 1992 is  
12       amended by striking sections 1369 (12 U.S.C.  
13       4619), 1369A (12 U.S.C. 4620), and 1369B (12  
14       U.S.C. 4621).

15              (2) FEDERAL HOME LOAN BANKS.—Section 25  
16       of the Federal Home Loan Bank Act (12 U.S.C.  
17       1445) is amended to read as follows:

18       **“SEC. 25. SUCCESSION OF FEDERAL HOME LOAN BANKS.**

19       “Each Federal Home Loan Bank shall have succes-  
20       sion until it is voluntarily merged with another Bank  
21       under this Act, or until it is merged, reorganized, rehabili-  
22       tated, liquidated, or otherwise wound up by the Director  
23       in accordance with the provisions of section 1367 of the  
24       Housing and Community Development Act of 1992, or by  
25       further Act of Congress.”.

1 **SEC. 155. CONFORMING AMENDMENTS.**

2 Title XIII of the Housing and Community Develop-  
3 ment Act of 1992, as amended by the preceding provisions  
4 of this Act, is further amended—

5 (1) in sections 1365 (12 U.S.C. 4615) through  
6 1369D (12 U.S.C. 4623), but not including section  
7 1367 (12 U.S.C. 4617) as amended by section 154  
8 of this Act—

9 (A) by striking “An enterprise” each place  
10 such term appears and inserting “A regulated  
11 entity”;

12 (B) by striking “an enterprise” each place  
13 such term appears and inserting “a regulated  
14 entity”; and

15 (C) by striking “the enterprise” each place  
16 such term appears and inserting “the regulated  
17 entity”;

18 (2) in section 1366 (12 U.S.C. 4616)—

19 (A) in subsection (b)(7), by striking “sec-  
20 tion 1369 (excluding subsection (a)(1) and  
21 (2))” and inserting “section 1367”; and

22 (B) in subsection (d), by striking “the en-  
23 terprises” and inserting “the regulated enti-  
24 ties”;

25 (3) in section 1368(d) (12 U.S.C. 4618(d)), by  
26 striking “Committee on Banking, Finance and



1 Urban Affairs” and inserting “Committee on Finan-  
2 cial Services”;

3 (4) in section 1369C (12 U.S.C. 4622)—

4 (A) in subsection (a)(4), by striking “ac-  
5 tivities (including existing and new programs)”  
6 and inserting “activities, services, undertakings,  
7 and offerings (including existing and new prod-  
8 ucts (as such term is defined in section  
9 1321(f))”; and

10 (B) in subsection (c), by striking “any en-  
11 terprise” and inserting “any regulated entity”;  
12 and

13 (5) in subsections (a) and (d) of section 1369D,  
14 by striking “section 1366 or 1367 or action under  
15 section 1369)” each place such phrase appears and  
16 inserting “section 1367”).

## 17 **Subtitle D—Enforcement Actions**

### 18 **SEC. 161. CEASE-AND-DESIST PROCEEDINGS.**

19 Section 1371 of the Housing and Community Devel-  
20 opment Act of 1992 (12 U.S.C. 4631) is amended—

21 (1) by striking subsections (a) and (b) and in-  
22 serting the following new subsections:

23 “(a) **ISSUANCE FOR UNSAFE OR UNSOUND PRAC-**  
24 **TICES AND VIOLATIONS OF RULES OR LAWS.**—If, in the  
25 opinion of the Director, a regulated entity or any regulated

1 entity-affiliated party is engaging or has engaged, or the  
2 Director has reasonable cause to believe that the regulated  
3 entity or any regulated entity-affiliated party is about to  
4 engage, in an unsafe or unsound practice in conducting  
5 the business of the regulated entity or is violating or has  
6 violated, or the Director has reasonable cause to believe  
7 that the regulated entity or any regulated entity-affiliated  
8 party is about to violate, a law, rule, or regulation, or any  
9 condition imposed in writing by the Director in connection  
10 with the granting of any application or other request by  
11 the regulated entity or any written agreement entered into  
12 with the Director, the Director may issue and serve upon  
13 the regulated entity or such party a notice of charges in  
14 respect thereof. The Director may not, pursuant to this  
15 section, enforce compliance with any housing goal estab-  
16 lished under subpart B of part 2 of subtitle A of this title,  
17 with section 1336 or 1337 of this title, with subsection  
18 (m) or (n) of section 309 of the Federal National Mort-  
19 gage Association Charter Act (12 U.S.C. 1723a(m), (n)),  
20 with subsection (e) or (f) of section 307 of the Federal  
21 Home Loan Mortgage Corporation Act (12 U.S.C.  
22 1456(e), (f)), or with paragraph (5) of section 10(j) of  
23 the Federal Home Loan Bank Act (12 U.S.C. 1430(j)).  
24 “(b) ISSUANCE FOR UNSATISFACTORY RATING.—If a  
25 regulated entity receives, in its most recent report of ex-

1 amination, a less-than-satisfactory rating for asset quality,  
2 management, earnings, or liquidity, the Director may (if  
3 the deficiency is not corrected) deem the regulated entity  
4 to be engaging in an unsafe or unsound practice for pur-  
5 poses of this subsection.”;

6 (2) in subsection (c)(2), by striking “enterprise,  
7 executive officer, or director” and inserting “regu-  
8 lated entity or regulated entity-affiliated party”; and

9 (3) in subsection (d)—

10 (A) in the matter preceding paragraph (1),  
11 by striking “enterprise, executive officer, or di-  
12 rector” and inserting “regulated entity or regu-  
13 lated entity-affiliated party”;

14 (B) in paragraph (1)—

15 (i) by striking “an executive officer or  
16 a director” and inserting “a regulated enti-  
17 ty affiliated party”; and

18 (ii) by inserting “(including reim-  
19 bursement of compensation under section  
20 1318)” after “reimbursement”;

21 (C) in paragraph (6), by striking “and” at  
22 the end;

23 (D) by redesignating paragraph (7) as  
24 paragraph (8); and

1 (E) by inserting after paragraph (6) the  
2 following new paragraph:

3 “(7) to effect an attachment on a regulated en-  
4 tity or regulated entity-affiliated party subject to an  
5 order under this section or section 1372; and”.

6 **SEC. 162. TEMPORARY CEASE-AND-DESIST PROCEEDINGS.**

7 Section 1372 of the Housing and Community Devel-  
8 opment Act of 1992 (12 U.S.C. 4632) is amended—

9 (1) by striking subsection (a) and inserting the  
10 following new subsection:

11 “(a) **GROUND FOR ISSUANCE.**—Whenever the Direc-  
12 tor determines that the violation or threatened violation  
13 or the unsafe or unsound practice or practices specified  
14 in the notice of charges served upon the regulated entity  
15 or any regulated entity-affiliated party pursuant to section  
16 1371(a), or the continuation thereof, is likely to cause in-  
17 solvency or significant dissipation of assets or earnings of  
18 the regulated entity, or is likely to weaken the condition  
19 of the regulated entity prior to the completion of the pro-  
20 ceedings conducted pursuant to sections 1371 and 1373,  
21 the Director may issue a temporary order requiring the  
22 regulated entity or such party to cease and desist from  
23 any such violation or practice and to take affirmative ac-  
24 tion to prevent or remedy such insolvency, dissipation,  
25 condition, or prejudice pending completion of such pro-

1 ceedings. Such order may include any requirement author-  
2 ized under section 1371(d).”;

3 (2) in subsection (b), by striking “enterprise,  
4 executive officer, or director” and inserting “regu-  
5 lated entity or regulated entity-affiliated party”;

6 (3) in subsection (d)—

7 (A) by striking “An enterprise, executive  
8 officer, or director” and inserting “A regulated  
9 entity or regulated entity-affiliated party”; and

10 (B) by striking “the enterprise, executive  
11 officer, or director” and inserting “the regu-  
12 lated entity or regulated entity-affiliated party”;  
13 and

14 (4) by striking subsection (e) and in inserting  
15 the following new subsection:

16 “(e) ENFORCEMENT.—In the case of violation or  
17 threatened violation of, or failure to obey, a temporary  
18 cease-and-desist order issued pursuant to this section, the  
19 Director may apply to the United States District Court  
20 for the District of Columbia or the United States district  
21 court within the jurisdiction of which the headquarters of  
22 the regulated entity is located, for an injunction to enforce  
23 such order, and, if the court determines that there has  
24 been such violation or threatened violation or failure to

1 obey, it shall be the duty of the court to issue such injunc-  
2 tion.”.

3 **SEC. 163. PREJUDGMENT ATTACHMENT.**

4 The Housing and Community Development Act of  
5 1992 is amended by inserting after section 1375 (12  
6 U.S.C. 4635) the following new section:

7 **“SEC. 1375A. PREJUDGMENT ATTACHMENT.**

8 “(a) IN GENERAL.—In any action brought pursuant  
9 to this title, or in actions brought in aid of, or to enforce  
10 an order in, any administrative or other civil action for  
11 money damages, restitution, or civil money penalties  
12 brought pursuant to this title, the court may, upon appli-  
13 cation of the Director or Attorney General, as applicable,  
14 issue a restraining order that—

15 “(1) prohibits any person subject to the pro-  
16 ceeding from withdrawing, transferring, removing,  
17 dissipating, or disposing of any funds, assets or  
18 other property; and

19 “(2) appoints a person on a temporary basis to  
20 administer the restraining order.

21 “(b) STANDARD.—

22 “(1) SHOWING.—Rule 65 of the Federal Rules  
23 of Civil Procedure shall apply with respect to any  
24 proceeding under subsection (a) without regard to  
25 the requirement of such rule that the applicant show

1       that the injury, loss, or damage is irreparable and  
2       immediate.

3           “(2) STATE PROCEEDING.—If, in the case of  
4       any proceeding in a State court, the court deter-  
5       mines that rules of civil procedure available under  
6       the laws of such State provide substantially similar  
7       protections to a party’s right to due process as Rule  
8       65 (as modified with respect to such proceeding by  
9       paragraph (1)), the relief sought under subsection  
10      (a) may be requested under the laws of such State.”.

11 **SEC. 164. ENFORCEMENT AND JURISDICTION.**

12       Section 1375 of the Housing and Community Devel-  
13      opment Act of 1992 (12 U.S.C. 4635) is amended—

14           (1) by striking subsection (a) and inserting the  
15      following new subsection:

16       “(a) ENFORCEMENT.—The Director may, in the dis-  
17      cretion of the Director, apply to the United States District  
18      Court for the District of Columbia, or the United States  
19      district court within the jurisdiction of which the head-  
20      quarters of the regulated entity is located, for the enforce-  
21      ment of any effective and outstanding notice or order  
22      issued under this subtitle or subtitle B, or request that  
23      the Attorney General of the United States bring such an  
24      action. Such court shall have jurisdiction and power to

1 order and require compliance with such notice or order.”;  
2 and

3 (2) in subsection (b), by striking “or 1376” and  
4 inserting “1376, or 1377”.

5 **SEC. 165. CIVIL MONEY PENALTIES.**

6 Section 1376 of the Housing and Community Devel-  
7 opment Act of 1992 (12 U.S.C. 4636) is amended—

8 (1) in subsection (a)—

9 (A) in the matter preceding paragraph (1),  
10 by striking “, or any executive officer or direc-  
11 tor” and inserting “or any regulated-entity af-  
12 filiated party”; and

13 (B) in paragraph (1)—

14 (i) by striking “the Federal National  
15 Mortgage Association Charter Act, the  
16 Federal Home Loan Mortgage Corporation  
17 Act” and inserting “any provision of any  
18 of the authorizing statutes”;

19 (ii) by striking “or Act” and inserting  
20 “or statute”;

21 (iii) by striking “or subsection” and  
22 inserting “, subsection”; and

23 (iv) by inserting “, or paragraph (5)  
24 or (12) of section 10(j) of the Federal



1 Home Loan Bank Act” before the semi-  
2 colon at the end;

3 (2) by striking subsection (b) and inserting the  
4 following new subsection:

5 “(b) AMOUNT OF PENALTY.—

6 “(1) FIRST TIER.—Any regulated entity which,  
7 or any regulated entity-affiliated party who—

8 “(A) violates any provision of this title,  
9 any provision of any of the authorizing statutes,  
10 or any order, condition, rule, or regulation  
11 under any such title or statute, except that the  
12 Director may not, pursuant to this section, en-  
13 force compliance with any housing goal estab-  
14 lished under subpart B of part 2 of subtitle A  
15 of this title, with section 1336 or 1337 of this  
16 title, with subsection (m) or (n) of section 309  
17 of the Federal National Mortgage Association  
18 Charter Act (12 U.S.C. 1723a(m), (n)), with  
19 subsection (e) or (f) of section 307 of the Fed-  
20 eral Home Loan Mortgage Corporation Act (12  
21 U.S.C. 1456(e), (f)), or with paragraph (5) or  
22 (12) of section 10(j) of the Federal Home Loan  
23 Bank Act;

24 “(B) violates any final or temporary order  
25 or notice issued pursuant to this title;

1           “(C) violates any condition imposed in  
2           writing by the Director in connection with the  
3           grant of any application or other request by  
4           such regulated entity; or

5           “(D) violates any written agreement be-  
6           tween the regulated entity and the Director,  
7           shall forfeit and pay a civil money penalty of not  
8           more than \$10,000 for each day during which such  
9           violation continues.

10          “(2) SECOND TIER.—Notwithstanding para-  
11          graph (1)—

12               “(A) if a regulated entity, or a regulated  
13               entity-affiliated party—

14                   “(i) commits any violation described  
15                   in any subparagraph of paragraph (1);

16                   “(ii) recklessly engages in an unsafe  
17                   or unsound practice in conducting the af-  
18                   fairs of such regulated entity; or

19                   “(iii) breaches any fiduciary duty; and

20          “(B) the violation, practice, or breach—

21                   “(i) is part of a pattern of mis-  
22                   conduct;

23                   “(ii) causes or is likely to cause more  
24                   than a minimal loss to such regulated enti-  
25                   ty; or

1                   “(iii) results in pecuniary gain or  
2                   other benefit to such party,  
3           the regulated entity or regulated entity-affiliated  
4           party shall forfeit and pay a civil penalty of not  
5           more than \$50,000 for each day during which such  
6           violation, practice, or breach continues.

7           “(3) THIRD TIER.—Notwithstanding para-  
8           graphs (1) and (2), any regulated entity which, or  
9           any regulated entity-affiliated party who—

10                   “(A) knowingly—

11                           “(i) commits any violation or engages  
12                           in any conduct described in any subpara-  
13                           graph of paragraph (1);

14                           “(ii) engages in any unsafe or un-  
15                           sound practice in conducting the affairs of  
16                           such regulated entity; or

17                           “(iii) breaches any fiduciary duty; and

18                   “(B) knowingly or recklessly causes a sub-  
19                   stantial loss to such regulated entity or a sub-  
20                   stantial pecuniary gain or other benefit to such  
21                   party by reason of such violation, practice, or  
22                   breach,

23           shall forfeit and pay a civil penalty in an amount not  
24           to exceed the applicable maximum amount deter-

1       mined under paragraph (4) for each day during  
2       which such violation, practice, or breach continues.

3               “(4) MAXIMUM AMOUNTS OF PENALTIES FOR  
4       ANY VIOLATION DESCRIBED IN PARAGRAPH (3).—  
5       The maximum daily amount of any civil penalty  
6       which may be assessed pursuant to paragraph (3)  
7       for any violation, practice, or breach described in  
8       such paragraph is—

9               “(A) in the case of any person other than  
10       a regulated entity, an amount not to exceed  
11       \$2,000,000; and

12              “(B) in the case of any regulated entity,  
13       \$2,000,000.”;

14       (3) in subsection (c)(1)(B), by striking “enter-  
15       prise, executive officer, or director” and inserting  
16       “regulated entity or regulated entity-affiliated  
17       party”;

18       (4) in subsection (d), by striking the first sen-  
19       tence and inserting the following: “If a regulated en-  
20       tity or regulated entity-affiliated party fails to com-  
21       ply with an order of the Director imposing a civil  
22       money penalty under this section, after the order is  
23       no longer subject to review as provided under sub-  
24       section (c)(1) and section 1374, the Director may, in  
25       the discretion of the Director, bring an action in the

1 United States District Court for the District of Co-  
 2 lumbia, or the United States district court within  
 3 the jurisdiction of which the headquarters of the reg-  
 4 ulated entity is located, to obtain a monetary judg-  
 5 ment against the regulated entity or regulated entity  
 6 affiliated party and such other relief as may be  
 7 available, or request that the Attorney General of  
 8 the United States bring such an action.”; and

9 (5) in subsection (g), by striking “subsection  
 10 (b)(3)” and inserting “this section, unless author-  
 11 ized by the Director by rule, regulation, or order”.

12 **SEC. 166. REMOVAL AND PROHIBITION AUTHORITY.**

13 (a) IN GENERAL.—Subtitle C of title XIII of the  
 14 Housing and Community Development Act of 1992 is  
 15 amended—

16 (1) by redesignating sections 1377, 1378, 1379,  
 17 1379A, and 1379B (12 U.S.C. 4637–41) as sections  
 18 1379, 1379A, 1379B, 1379C, and 1379D, respec-  
 19 tively; and

20 (2) by inserting after section 1376 (12 U.S.C.  
 21 4636) the following new section:

22 **“SEC. 1377. REMOVAL AND PROHIBITION AUTHORITY.**

23 “(a) AUTHORITY TO ISSUE ORDER.—Whenever the  
 24 Director determines that—

1           “(1) any regulated entity-affiliated party has,  
2 directly or indirectly—

3           “(A) violated—

4               “(i) any law or regulation;

5               “(ii) any cease-and-desist order which  
6 has become final;

7               “(iii) any condition imposed in writing  
8 by the Director in connection with the  
9 grant of any application or other request  
10 by such regulated entity; or

11              “(iv) any written agreement between  
12 such regulated entity and the Director;

13              “(B) engaged or participated in any unsafe  
14 or unsound practice in connection with any reg-  
15 ulated entity; or

16              “(C) committed or engaged in any act,  
17 omission, or practice which constitutes a breach  
18 of such party’s fiduciary duty;

19           “(2) by reason of the violation, practice, or  
20 breach described in any subparagraph of paragraph  
21 (1)—

22               “(A) such regulated entity has suffered or  
23 will probably suffer financial loss or other dam-  
24 age; or

1           “(B) such party has received financial gain  
2           or other benefit by reason of such violation,  
3           practice, or breach; and

4           “(3) such violation, practice, or breach—

5           “(A) involves personal dishonesty on the  
6           part of such party; or

7           “(B) demonstrates willful or continuing  
8           disregard by such party for the safety or sound-  
9           ness of such regulated entity, the Director may  
10          serve upon such party a written notice of the  
11          Director’s intention to remove such party from  
12          office or to prohibit any further participation by  
13          such party, in any manner, in the conduct of  
14          the affairs of any regulated entity.

15          “(b) SUSPENSION ORDER.—

16          “(1) SUSPENSION OR PROHIBITION AUTHOR-  
17          ITY.—If the Director serves written notice under  
18          subsection (a) to any regulated entity-affiliated party  
19          of the Director’s intention to issue an order under  
20          such subsection, the Director may—

21                 “(A) suspend such party from office or  
22                 prohibit such party from further participation  
23                 in any manner in the conduct of the affairs of  
24                 the regulated entity, if the Director—

1                   “(i) determines that such action is  
2                   necessary for the protection of the regu-  
3                   lated entity; and

4                   “(ii) serves such party with written  
5                   notice of the suspension order; and

6                   “(B) prohibit the regulated entity from re-  
7                   leasing to or on behalf of the regulated entity-  
8                   affiliated party any compensation or other pay-  
9                   ment of money or other thing of current or po-  
10                  tential value in connection with any resignation,  
11                  removal, retirement, or other termination of  
12                  employment or office of the party.

13                  “(2) EFFECTIVE PERIOD.—Any suspension  
14                  order issued under this subsection—

15                  “(A) shall become effective upon service;  
16                  and

17                  “(B) unless a court issues a stay of such  
18                  order under subsection (g) of this section, shall  
19                  remain in effect and enforceable until—

20                  “(i) the date the Director dismisses  
21                  the charges contained in the notice served  
22                  under subsection (a) with respect to such  
23                  party; or



1                   “(ii) the effective date of an order  
2                   issued by the Director to such party under  
3                   subsection (a).

4                   “(3) COPY OF ORDER.—If the Director issues a  
5                   suspension order under this subsection to any regu-  
6                   lated entity-affiliated party, the Director shall serve  
7                   a copy of such order on any regulated entity with  
8                   which such party is affiliated at the time such order  
9                   is issued.

10                  “(c) NOTICE, HEARING, AND ORDER.—A notice of  
11                  intention to remove a regulated entity-affiliated party  
12                  from office or to prohibit such party from participating  
13                  in the conduct of the affairs of a regulated entity shall  
14                  contain a statement of the facts constituting grounds for  
15                  such action, and shall fix a time and place at which a hear-  
16                  ing will be held on such action. Such hearing shall be fixed  
17                  for a date not earlier than 30 days nor later than 60 days  
18                  after the date of service of such notice, unless an earlier  
19                  or a later date is set by the Director at the request of  
20                  (1) such party, and for good cause shown, or (2) the At-  
21                  torney General of the United States. Unless such party  
22                  shall appear at the hearing in person or by a duly author-  
23                  ized representative, such party shall be deemed to have  
24                  consented to the issuance of an order of such removal or  
25                  prohibition. In the event of such consent, or if upon the

1 record made at any such hearing the Director shall find  
2 that any of the grounds specified in such notice have been  
3 established, the Director may issue such orders of suspen-  
4 sion or removal from office, or prohibition from participa-  
5 tion in the conduct of the affairs of the regulated entity,  
6 as it may deem appropriate, together with an order pro-  
7 hibiting compensation described in subsection (b)(1)(B).  
8 Any such order shall become effective at the expiration  
9 of 30 days after service upon such regulated entity and  
10 such party (except in the case of an order issued upon  
11 consent, which shall become effective at the time specified  
12 therein). Such order shall remain effective and enforceable  
13 except to such extent as it is stayed, modified, terminated,  
14 or set aside by action of the Director or a reviewing court.

15 “(d) PROHIBITION OF CERTAIN SPECIFIC ACTIVI-  
16 TIES.—Any person subject to an order issued under this  
17 section shall not—

18 “(1) participate in any manner in the conduct  
19 of the affairs of any regulated entity;

20 “(2) solicit, procure, transfer, attempt to trans-  
21 fer, vote, or attempt to vote any proxy, consent, or  
22 authorization with respect to any voting rights in  
23 any regulated entity;

24 “(3) violate any voting agreement previously  
25 approved by the Director; or

1           “(4) vote for a director, or serve or act as a  
2 regulated entity-affiliated party.

3           “(e) INDUSTRY-WIDE PROHIBITION.—

4           “(1) IN GENERAL.—Except as provided in para-  
5 graph (2), any person who, pursuant to an order  
6 issued under this section, has been removed or sus-  
7 pended from office in a regulated entity or prohib-  
8 ited from participating in the conduct of the affairs  
9 of a regulated entity may not, while such order is in  
10 effect, continue or commence to hold any office in,  
11 or participate in any manner in the conduct of the  
12 affairs of, any regulated entity.

13           “(2) EXCEPTION IF DIRECTOR PROVIDES WRIT-  
14 TEN CONSENT.—If, on or after the date an order is  
15 issued under this section which removes or suspends  
16 from office any regulated entity-affiliated party or  
17 prohibits such party from participating in the con-  
18 duct of the affairs of a regulated entity, such party  
19 receives the written consent of the Director, the  
20 order shall, to the extent of such consent, cease to  
21 apply to such party with respect to the regulated en-  
22 tity described in the written consent. If the Director  
23 grants such a written consent, it shall publicly dis-  
24 close such consent.

1           “(3) VIOLATION OF PARAGRAPH (1) TREATED  
2       AS VIOLATION OF ORDER.—Any violation of para-  
3       graph (1) by any person who is subject to an order  
4       described in such subsection shall be treated as a  
5       violation of the order.

6       “(f) APPLICABILITY.—This section shall only apply  
7       to a person who is an individual, unless the Director spe-  
8       cifically finds that it should apply to a corporation, firm,  
9       or other business enterprise.

10       “(g) STAY OF SUSPENSION AND PROHIBITION OF  
11       REGULATED ENTITY-AFFILIATED PARTY.—Within 10  
12       days after any regulated entity-affiliated party has been  
13       suspended from office and/or prohibited from participation  
14       in the conduct of the affairs of a regulated entity under  
15       this section, such party may apply to the United States  
16       District Court for the District of Columbia, or the United  
17       States district court for the judicial district in which the  
18       headquarters of the regulated entity is located, for a stay  
19       of such suspension and/or prohibition and any prohibition  
20       under subsection (b)(1)(B) pending the completion of the  
21       administrative proceedings pursuant to the notice served  
22       upon such party under this section, and such court shall  
23       have jurisdiction to stay such suspension and/or prohibi-  
24       tion.

1       “(h) SUSPENSION OR REMOVAL OF REGULATED EN-  
2 TITY-AFFILIATED PARTY CHARGED WITH FELONY.—

3               “(1) SUSPENSION OR PROHIBITION.—

4                       “(A) IN GENERAL.—Whenever any regu-  
5 lated entity-affiliated party is charged in any  
6 information, indictment, or complaint, with the  
7 commission of or participation in a crime in-  
8 volving dishonesty or breach of trust which is  
9 punishable by imprisonment for a term exceed-  
10 ing one year under State or Federal law, the  
11 Director may, if continued service or participa-  
12 tion by such party may pose a threat to the  
13 regulated entity or impair public confidence in  
14 the regulated entity, by written notice served  
15 upon such party—

16                       “(i) suspend such party from office or  
17 prohibit such party from further participa-  
18 tion in any manner in the conduct of the  
19 affairs of any regulated entity; and

20                       “(ii) prohibit the regulated entity  
21 from releasing to or on behalf of the regu-  
22 lated entity-affiliated party any compensa-  
23 tion or other payment of money or other  
24 thing of current or potential value in con-  
25 nection with the period of any such sus-

1 pension or with any resignation, removal,  
2 retirement, or other termination of employ-  
3 ment or office of the party.

4 “(B) PROVISIONS APPLICABLE TO NO-  
5 TICE.—

6 “(i) COPY.—A copy of any notice  
7 under paragraph (1)(A) shall also be  
8 served upon the regulated entity.

9 “(ii) EFFECTIVE PERIOD.—A suspen-  
10 sion or prohibition under subparagraph (A)  
11 shall remain in effect until the informa-  
12 tion, indictment, or complaint referred to  
13 in such subparagraph is finally disposed of  
14 or until terminated by the Director.

15 “(2) REMOVAL OR PROHIBITION.—

16 “(A) IN GENERAL.—If a judgment of con-  
17 viction or an agreement to enter a pretrial di-  
18 version or other similar program is entered  
19 against a regulated entity-affiliated party in  
20 connection with a crime described in paragraph  
21 (1)(A), at such time as such judgment is not  
22 subject to further appellate review, the Director  
23 may, if continued service or participation by  
24 such party may pose a threat to the regulated  
25 entity or impair public confidence in the regu-

1           lated entity, issue and serve upon such party an  
2           order that—

3                   “(i) removes such party from office or  
4                   prohibits such party from further partici-  
5                   pation in any manner in the conduct of the  
6                   affairs of the regulated entity without the  
7                   prior written consent of the Director; and

8                   “(ii) prohibits the regulated entity  
9                   from releasing to or on behalf of the regu-  
10                  lated entity-affiliated party any compensa-  
11                  tion or other payment of money or other  
12                  thing of current or potential value in con-  
13                  nection with the termination of employ-  
14                  ment or office of the party.

15               “(B)   PROVISIONS   APPLICABLE   TO  
16               ORDER.—

17                   “(i) COPY.—A copy of any order  
18                   under paragraph (2)(A) shall also be  
19                   served upon the regulated entity, where-  
20                   upon the regulated entity-affiliated party  
21                   who is subject to the order (if a director or  
22                   an officer) shall cease to be a director or  
23                   officer of such regulated entity.

24                   “(ii) EFFECT OF ACQUITTAL.—A find-  
25                   ing of not guilty or other disposition of the

1 charge shall not preclude the Director from  
2 instituting proceedings after such finding  
3 or disposition to remove such party from  
4 office or to prohibit further participation in  
5 regulated entity affairs, and to prohibit  
6 compensation or other payment of money  
7 or other thing of current or potential value  
8 in connection with any resignation, re-  
9 moval, retirement, or other termination of  
10 employment or office of the party, pursu-  
11 ant to subsections (a), (d), or (e) of this  
12 section.

13 “(iii) EFFECTIVE PERIOD.—Any no-  
14 tice of suspension or order of removal  
15 issued under this subsection shall remain  
16 effective and outstanding until the comple-  
17 tion of any hearing or appeal authorized  
18 under paragraph (4) unless terminated by  
19 the Director.

20 “(3) AUTHORITY OF REMAINING BOARD MEM-  
21 BERS.—If at any time, because of the suspension of  
22 one or more directors pursuant to this section, there  
23 shall be on the board of directors of a regulated enti-  
24 ty less than a quorum of directors not so suspended,  
25 all powers and functions vested in or exercisable by



1       such board shall vest in and be exercisable by the di-  
2       rector or directors on the board not so suspended,  
3       until such time as there shall be a quorum of the  
4       board of directors. In the event all of the directors  
5       of a regulated entity are suspended pursuant to this  
6       section, the Director shall appoint persons to serve  
7       temporarily as directors in their place and stead  
8       pending the termination of such suspensions, or  
9       until such time as those who have been suspended  
10      cease to be directors of the regulated entity and  
11      their respective successors take office.

12           “(4) HEARING REGARDING CONTINUED PAR-  
13      TICIPATION.—Within 30 days from service of any  
14      notice of suspension or order of removal issued pur-  
15      suant to paragraph (1) or (2) of this subsection, the  
16      regulated entity-affiliated party concerned may re-  
17      quest in writing an opportunity to appear before the  
18      Director to show that the continued service to or  
19      participation in the conduct of the affairs of the reg-  
20      ulated entity by such party does not, or is not likely  
21      to, pose a threat to the interests of the regulated en-  
22      tity or threaten to impair public confidence in the  
23      regulated entity. Upon receipt of any such request,  
24      the Director shall fix a time (not more than 30 days  
25      after receipt of such request, unless extended at the

1 request of such party) and place at which such party  
2 may appear, personally or through counsel, before  
3 one or more members of the Director or designated  
4 employees of the Director to submit written mate-  
5 rials (or, at the discretion of the Director, oral testi-  
6 mony) and oral argument. Within 60 days of such  
7 hearing, the Director shall notify such party whether  
8 the suspension or prohibition from participation in  
9 any manner in the conduct of the affairs of the reg-  
10 ulated entity will be continued, terminated, or other-  
11 wise modified, or whether the order removing such  
12 party from office or prohibiting such party from fur-  
13 ther participation in any manner in the conduct of  
14 the affairs of the regulated entity, and prohibiting  
15 compensation in connection with termination will be  
16 rescinded or otherwise modified. Such notification  
17 shall contain a statement of the basis for the Direc-  
18 tor's decision, if adverse to such party. The Director  
19 is authorized to prescribe such rules as may be nec-  
20 essary to effectuate the purposes of this subsection.

21 “(i) HEARINGS AND JUDICIAL REVIEW.—

22 “(1) VENUE AND PROCEDURE.—Any hearing  
23 provided for in this section shall be held in the Dis-  
24 trict of Columbia or in the Federal judicial district  
25 in which the headquarters of the regulated entity is

1 located, unless the party afforded the hearing con-  
2 sents to another place, and shall be conducted in ac-  
3 cordance with the provisions of chapter 5 of title 5,  
4 United States Code. After such hearing, and within  
5 90 days after the Director has notified the parties  
6 that the case has been submitted to it for final deci-  
7 sion, it shall render its decision (which shall include  
8 findings of fact upon which its decision is predi-  
9 cated) and shall issue and serve upon each party to  
10 the proceeding an order or orders consistent with  
11 the provisions of this section. Judicial review of any  
12 such order shall be exclusively as provided in this  
13 subsection. Unless a petition for review is timely  
14 filed in a court of appeals of the United States, as  
15 provided in paragraph (2), and thereafter until the  
16 record in the proceeding has been filed as so pro-  
17 vided, the Director may at any time, upon such no-  
18 tice and in such manner as it shall deem proper,  
19 modify, terminate, or set aside any such order. Upon  
20 such filing of the record, the Director may modify,  
21 terminate, or set aside any such order with permis-  
22 sion of the court.

23 “(2) REVIEW OF ORDER.—Any party to any  
24 proceeding under paragraph (1) may obtain a review  
25 of any order served pursuant to paragraph (1)

1 (other than an order issued with the consent of the  
2 regulated entity or the regulated entity-affiliated  
3 party concerned, or an order issued under subsection  
4 (h) of this section) by the filing in the United States  
5 Court of Appeals for the District of Columbia Cir-  
6 cuit or court of appeals of the United States for the  
7 circuit in which the headquarters of the regulated  
8 entity is located, within 30 days after the date of  
9 service of such order, a written petition praying that  
10 the order of the Director be modified, terminated, or  
11 set aside. A copy of such petition shall be forthwith  
12 transmitted by the clerk of the court to the Director,  
13 and thereupon the Director shall file in the court the  
14 record in the proceeding, as provided in section 2112  
15 of title 28, United States Code. Upon the filing of  
16 such petition, such court shall have jurisdiction,  
17 which upon the filing of the record shall (except as  
18 provided in the last sentence of paragraph (1)) be  
19 exclusive, to affirm, modify, terminate, or set aside,  
20 in whole or in part, the order of the Director. Re-  
21 view of such proceedings shall be had as provided in  
22 chapter 7 of title 5, United States Code. The judg-  
23 ment and decree of the court shall be final, except  
24 that the same shall be subject to review by the Su-

1       preme Court upon certiorari, as provided in section  
2       1254 of title 28, United States Code.

3           “(3) PROCEEDINGS NOT TREATED AS STAY.—  
4       The commencement of proceedings for judicial re-  
5       view under paragraph (2) shall not, unless specifi-  
6       cally ordered by the court, operate as a stay of any  
7       order issued by the Director.”.

8       (b) CONFORMING AMENDMENTS.—

9           (1) 1992 ACT.—Section 1317(f) of the Housing  
10       and Community Development Act of 1992 (12  
11       U.S.C. 4517(f)) is amended by striking “section  
12       1379B” and inserting “section 1379D”.

13          (2) FANNIE MAE CHARTER ACT.—The second  
14       sentence of subsection (b) of section 308 of the Fed-  
15       eral National Mortgage Association Charter Act (12  
16       U.S.C. 1723(b)) is amended by striking “The” and  
17       inserting “Except to the extent that action under  
18       section 1377 of the Housing and Community Devel-  
19       opment Act of 1992 temporarily results in a lesser  
20       number, the”.

21          (3) FREDDIE MAC ACT.—The second sentence  
22       of subparagraph (A) of section 303(a)(2) of the  
23       Federal Home Loan Mortgage Corporation Act (12  
24       U.S.C. 1452(a)(2)(A)) is amended by striking  
25       “The” and inserting “Except to the extent that ac-

1       tion under section 1377 of the Housing and Commu-  
2       nity Development Act of 1992 temporarily results in  
3       a lesser number, the”.

4   **SEC. 167. CRIMINAL PENALTY.**

5       Subtitle C of title XIII of the Housing and Commu-  
6       nity Development Act of 1992 (12 U.S.C. 4631 et seq.)  
7       is amended by inserting after section 1377 (as added by  
8       the preceding provisions of this Act) the following new sec-  
9       tion:

10   **“SEC. 1378. CRIMINAL PENALTY.**

11       “Whoever, being subject to an order in effect under  
12       section 1377, without the prior written approval of the Di-  
13       rector, knowingly participates, directly or indirectly, in any  
14       manner (including by engaging in an activity specifically  
15       prohibited in such an order) in the conduct of the affairs  
16       of any regulated entity shall, notwithstanding section  
17       3571 of title 18, be fined not more than \$1,000,000, im-  
18       prisoned for not more than 5 years, or both.”.

19   **SEC. 168. SUBPOENA AUTHORITY.**

20       Section 1379D(c) of the Housing and Community  
21       Development Act of 1992 (12 U.S.C. 4641(c)), as so re-  
22       designated by section 166(a)(1) of this Act, is further  
23       amended—

1           (1) by striking “request the Attorney General  
2           of the United States to” and inserting “, in the dis-  
3           cretion of the Director,”;

4           (2) by inserting “or request that the Attorney  
5           General of the United States bring such an action,”  
6           after “District of Columbia,”; and

7           (3) by striking “or may, under the direction  
8           and control of the Attorney General, bring such an  
9           action”.

10 **SEC. 169. CONFORMING AMENDMENTS.**

11           Subtitle C of title XIII of the Housing and Commu-  
12           nity Development Act of 1992 (12 U.S.C. 4631 et seq.),  
13           as amended by the preceding provisions of this Act, is  
14           amended—

15           (1) in section 1372(c)(1) (12 U.S.C. 4632(c)),  
16           by striking “that enterprise” and inserting “that  
17           regulated entity”;

18           (2) in section 1379 (12 U.S.C. 4637), as so re-  
19           designated by section 166(a)(1) of this Act—

20                   (A) by inserting “, or of a regulated entity-  
21                   affiliated party,” before “shall not affect”; and

22                   (B) by striking “such director or executive  
23                   officer” each place such term appears and in-  
24                   serting “such director, executive officer, or reg-  
25                   ulated entity-affiliated party”;

1           (3) in section 1379A (12 U.S.C. 4638), as so  
 2           redesignated by section 166(a)(1) of this Act, by in-  
 3           serting “or against a regulated entity-affiliated  
 4           party,” before “or impair”;

5           (4) by striking “An enterprise” each place such  
 6           term appears in such subtitle and inserting “A regu-  
 7           lated entity”;

8           (5) by striking “an enterprise” each place such  
 9           term appears in such subtitle and inserting “a regu-  
 10          lated entity”;

11          (6) by striking “the enterprise” each place such  
 12          term appears in such subtitle and inserting “the reg-  
 13          ulated entity”; and

14          (7) by striking “any enterprise” each place such  
 15          term appears in such subtitle and inserting “any  
 16          regulated entity”.

## 17       **Subtitle E—General Provisions**

### 18       **SEC. 181. BOARDS OF ENTERPRISES.**

19          (a) FANNIE MAE.—

20               (1) IN GENERAL.—Section 308(b) of the Fed-  
 21          eral National Mortgage Association Charter Act (12  
 22          U.S.C. 1723(b)) is amended—

23                       (A) in the first sentence, by striking  
 24                       “eighteen persons, five of whom shall be ap-  
 25                       pointed annually by the President of the United



1 States, and the remainder of whom” and insert-  
 2 ing “13 persons, or such other number that the  
 3 Director determines appropriate, who”;

4 (B) in the second sentence, by striking  
 5 “appointed by the President”;

6 (C) in the third sentence—

7 (i) by striking “appointed or”; and

8 (ii) by striking “, except that any  
 9 such appointed member may be removed  
 10 from office by the President for good  
 11 cause”;

12 (D) in the fourth sentence, by striking  
 13 “elective”; and

14 (E) by striking the fifth sentence.

15 (2) TRANSITIONAL PROVISION.—The amend-  
 16 ments made by paragraph (1) shall not apply to any  
 17 appointed position of the board of directors of the  
 18 Federal National Mortgage Association until the ex-  
 19 piration of the annual term for such position during  
 20 which the effective date under Section 185 occurs.

21 (b) FREDDIE MAC.—

22 (1) IN GENERAL.—Section 303(a)(2) of the  
 23 Federal Home Loan Mortgage Corporation Act (12  
 24 U.S.C. 1452(a)(2)) is amended—

25 (A) in subparagraph (A)—

1 (i) in the first sentence, by striking  
2 “18 persons, 5 of whom shall be appointed  
3 annually by the President of the United  
4 States and the remainder of whom” and  
5 inserting “13 persons, or such other num-  
6 ber as the Director determines appropriate,  
7 who”; and

8 (ii) in the second sentence, by striking  
9 “appointed by the President of the United  
10 States”;

11 (B) in subparagraph (B)—

12 (i) by striking “such or”; and

13 (ii) by striking “, except that any ap-  
14 pointed member may be removed from of-  
15 fice by the President for good cause”; and

16 (C) in subparagraph (C)—

17 (i) by striking the first sentence; and

18 (ii) by striking “elective”.

19 (2) TRANSITIONAL PROVISION.—The amend-  
20 ments made by paragraph (1) shall not apply to any  
21 appointed position of the board of directors of the  
22 Federal Home Loan Mortgage Corporation until the  
23 expiration of the annual term for such position dur-  
24 ing which the effective date under Section 185 oc-  
25 curs.

1 **SEC. 182. REPORT ON PORTFOLIO OPERATIONS, SAFETY**  
2 **AND SOUNDNESS, AND MISSION OF ENTER-**  
3 **PRISES.**

4 Not later than the expiration of the 12-month period  
5 beginning on the effective date under section 185, the Di-  
6 rector of the Federal Housing Finance Agency shall sub-  
7 mit a report to the Congress which shall include—

8 (1) a description of the portfolio holdings of the  
9 enterprises (as such term is defined in section 1303  
10 of the Housing and Community Development Act of  
11 1992 (12 U.S.C. 4502) in mortgages (including  
12 whole loans and mortgage-backed securities), non-  
13 mortgages, and other assets;

14 (2) a description of the risk implications for the  
15 enterprises of such holdings and the consequent risk  
16 management undertaken by the enterprises (includ-  
17 ing the use of derivatives for hedging purposes),  
18 compared with off-balance sheet liabilities of the en-  
19 terprises (including mortgage-backed securities guar-  
20 anteed by the enterprises);

21 (3) an analysis of portfolio holdings for safety  
22 and soundness purposes;

23 (4) an assessment of whether portfolio holdings  
24 fulfill the mission purposes of the enterprises under  
25 the Federal National Mortgage Association Charter

1 Act and the Federal Home Loan Mortgage Corpora-  
2 tion Act; and

3 (5) an analysis of the potential systemic risk  
4 implications for the enterprises, the housing and  
5 capital markets, and the financial system of portfolio  
6 holdings, and whether such holdings should be lim-  
7 ited or reduced over time.

8 **SEC. 183. CONFORMING AND TECHNICAL AMENDMENTS.**

9 (a) 1992 ACT.—Title XIII of the Housing and Com-  
10 munity Development Act of 1992 is amended by striking  
11 section 1383 (12 U.S.C. 1451 note).

12 (b) TITLE 18, UNITED STATES CODE.—Section 1905  
13 of title 18, United States Code, is amended by striking  
14 “Office of Federal Housing Enterprise Oversight” and in-  
15 serting “Federal Housing Finance Agency”.

16 (c) FLOOD DISASTER PROTECTION ACT OF 1973.—  
17 Section 102(f)(3)(A) of the Flood Disaster Protection Act  
18 of 1973 (42 U.S.C. 4012a(f)(3)(A)) is amended by strik-  
19 ing “Director of the Office of Federal Housing Enterprise  
20 Oversight of the Department of Housing and Urban De-  
21 velopment” and inserting “Director of the Federal Hous-  
22 ing Finance Agency”.

23 (d) DEPARTMENT OF HOUSING AND URBAN DEVEL-  
24 OPMENT ACT.—Section 5 of the Department of Housing

1 and Urban Development Act (42 U.S.C. 3534) is amended  
2 by striking subsection (d).

3 (e) TITLE 5, UNITED STATES CODE.—

4 (1) DIRECTOR’S PAY RATE.—Section 5313 of  
5 title 5, United States Code, is amended by striking  
6 the item relating to the Director of the Office of  
7 Federal Housing Enterprise Oversight, Department  
8 of Housing and Urban Development and inserting  
9 the following new item:

10 “Director of the Federal Housing Finance  
11 Agency.”.

12 (2) EXCLUSION FROM SENIOR EXECUTIVE  
13 SERVICE.—Section 3132(a)(1)(D) of title 5, United  
14 States Code, is amended—

15 (A) by striking “the Federal Housing Fi-  
16 nance Board,”; and

17 (B) by striking “the Office of Federal  
18 Housing Enterprise Oversight of the Depart-  
19 ment of Housing and Urban Development” and  
20 inserting “the Federal Housing Finance Agen-  
21 cy”.

22 (f) INSPECTOR GENERAL ACT OF 1978.—Section  
23 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C.  
24 App.) is amended by striking “Federal Housing Finance  
25 Board” and inserting “Federal Housing Finance Agency”.

1 (g) FEDERAL DEPOSIT INSURANCE ACT.—Section  
2 11(t)(2)(A) of the Federal Deposit Insurance Act (12  
3 U.S.C.1821(t)(2)(A)) is amended by adding at the end the  
4 following new clause:

5 “(vii) The Federal Housing Finance  
6 Agency.”.

7 (h) 1997 EMERGENCY SUPPLEMENTAL APPROPRIA-  
8 TIONS ACT.—Section 10001 of the 1997 Emergency Sup-  
9 plemental Appropriations Act for Recovery From Natural  
10 Disasters, and for Overseas Peacekeeping Efforts, Includ-  
11 ing Those In Bosnia (42 U.S.C. 3548) is amended—

12 (1) by striking “the Government National Mort-  
13 gage Association, and the Office of Federal Housing  
14 Enterprise Oversight” and inserting “and the Gov-  
15 ernment National Mortgage Association”; and

16 (2) by striking “, the Government National  
17 Mortgage Association, or the Office of Federal  
18 Housing Enterprise Oversight” and inserting “or  
19 the Government National Mortgage Association”.

20 (i) NATIONAL HOMEOWNERSHIP TRUST ACT.—Sec-  
21 tion 302(b)(4) of the Cranston-Gonzalez National Afford-  
22 able Housing Act (42 U.S.C. 12851(b)(4)) is amended by  
23 striking “the chairperson of the Federal Housing Finance  
24 Board” and inserting “the Director of the Federal Hous-  
25 ing Finance Agency”.

1 **SEC. 184. STUDY OF ALTERNATIVE SECONDARY MARKET**  
2 **SYSTEMS.**

3 (a) IN GENERAL.—The Director of the Federal  
4 Housing Finance Agency, in consultation with the Board  
5 of Governors of the Federal Reserve System, the Secretary  
6 of the Treasury, and the Secretary of Housing and Urban  
7 Development, shall conduct a comprehensive study of the  
8 effects on financial and housing finance markets of alter-  
9 natives to the current secondary market system for hous-  
10 ing finance, taking into consideration changes in the struc-  
11 ture of financial and housing finance markets and institu-  
12 tions since the creation of the Federal National Mortgage  
13 Association and the Federal Home Loan Mortgage Cor-  
14 poration.

15 (b) CONTENTS.—The study under this section  
16 shall—

17 (1) include, among the alternatives to the cur-  
18 rent secondary market system analyzed—

19 (A) repeal of the chartering Acts for the  
20 Federal National Mortgage Association and the  
21 Federal Home Loan Mortgage Corporation;

22 (B) establishing bank-like mechanisms for  
23 granting new charters for limited purposed  
24 mortgage securitization entities;

25 (C) permitting the Director of the Federal  
26 Housing Finance Agency to grant new charters

1           for limited purpose mortgage securitization en-  
2           tities, which shall include analyzing the terms  
3           on which such charters should be granted, in-  
4           cluding whether such charters should be sold,  
5           or whether such charters and the charters for  
6           the Federal National Mortgage Association and  
7           the Federal Home Loan Mortgage Corporation  
8           should be taxed or otherwise assessed a mone-  
9           tary price; and

10                 (D) such other alternatives as the Director  
11           considers appropriate;

12           (2) examine all of the issues involved in making  
13           the transition to a completely private secondary  
14           mortgage market system;

15           (3) examine the technological advancements the  
16           private sector has made in providing liquidity in the  
17           secondary mortgage market and how such advance-  
18           ments have affected liquidity in the secondary mort-  
19           gage market; and

20           (4) examine how taxpayers would be impacted  
21           by each alternative system, including the complete  
22           privatization of the Federal National Mortgage As-  
23           sociation and the Federal Home Loan Mortgage  
24           Corporation.



1 (c) REPORT.—The Director of the Federal Housing  
2 Finance Agency shall submit a report to the Congress on  
3 the study not later than the expiration of the 24-month  
4 period beginning on the effective date under section 185.

5 **SEC. 185. EFFECTIVE DATE.**

6 Except as specifically provided otherwise in this title,  
7 this title shall take effect on and the amendments made  
8 by this title shall take effect on, and shall apply beginning  
9 on, the expiration of the 6-month period beginning on the  
10 date of the enactment of this Act.

11 **TITLE II—FEDERAL HOME LOAN**  
12 **BANKS**

13 **SEC. 201. DEFINITIONS.**

14 Section 2 of the Federal Home Loan Bank Act (12  
15 U.S.C. 1422) is amended—

16 (1) by striking paragraphs (1), (10), and (11);

17 (2) by redesignating paragraphs (2) through  
18 (9) as paragraphs (1) through (8), respectively;

19 (3) by redesignating paragraphs (12) and (13)  
20 as paragraphs (9) and (10), respectively; and

21 (4) by adding at the end the following:

22 “(11) DIRECTOR.—The term ‘Director’ means  
23 the Director of the Federal Housing Finance Agen-  
24 cy.

1           “(12) AGENCY.—The term ‘Agency’ means the  
2       Federal Housing Finance Agency.”.

3   **SEC. 202. DIRECTORS.**

4       (a) ELECTION.—Section 7 of the Federal Home Loan  
5   Bank Act (12 U.S.C. 1427) is amended—

6           (1) by striking subsection (a) and inserting the  
7       following:

8       “(a) NUMBER; ELECTION; QUALIFICATIONS; CON-  
9   FLICTS OF INTEREST.—

10           “(1) IN GENERAL.—The management of each  
11   Federal Home Loan Bank shall be vested in a board  
12   of 13 directors, or such other number as the Direc-  
13   tor determines appropriate, each of whom shall be a  
14   citizen of the United States. All directors of a Bank  
15   who are not independent directors pursuant to para-  
16   graph (3) shall be elected by the members.

17           “(2) MEMBER DIRECTORS.—A majority of the  
18   directors of each Bank shall be officers or directors  
19   of a member of such Bank that is located in the dis-  
20   trict in which such Bank is located.

21           “(3) INDEPENDENT DIRECTORS.—At least two-  
22   fifths of the directors of each Bank shall be inde-  
23   pendent directors, who shall be appointed by the Di-  
24   rector of the Federal Housing Finance Agency from  
25   a list of individuals recommended by the Federal

1       Housing Enterprise Board. The Federal Housing  
2       Enterprise Board may recommend individuals who  
3       are identified by the Board’s own independent proc-  
4       ess or included on a list of individuals recommended  
5       by the board of directors of the Bank involved,  
6       which shall be submitted to the Federal Housing  
7       Enterprise Board by such board of directors. The  
8       number of individuals on any such list submitted by  
9       a Bank’s board of directors shall be equal to at least  
10      two times the number of independent directorships  
11      to be filled. All independent directors appointed shall  
12      meet the following criteria:

13               “(A) IN GENERAL.—Each independent di-  
14              rector shall be a bona fide resident of the dis-  
15              trict in which such Bank is located.

16               “(B) PUBLIC INTEREST DIRECTORS.—At  
17              least 2 of the independent directors under this  
18              paragraph of each Bank shall be representatives  
19              chosen from organizations with more than a 2-  
20              year history of representing consumer or com-  
21              munity interests on banking services, credit  
22              needs, housing, community development, eco-  
23              nomic development, or financial consumer pro-  
24              tections.

25               “(C) OTHER DIRECTORS.—

1                   “(i) QUALIFICATIONS.—Each inde-  
2                   pendent director that is not a public inter-  
3                   est director under subparagraph (B) shall  
4                   have demonstrated knowledge of, or experi-  
5                   ence in, financial management, auditing  
6                   and accounting, risk management prac-  
7                   tices, derivatives, project development, or  
8                   organizational management, or such other  
9                   knowledge or expertise as the Director may  
10                  provide by regulation.

11                  “(ii) CONSULTATION WITH BANKS.—  
12                  In appointing other directors to serve on  
13                  the board of a Federal home loan bank,  
14                  the Director of the Federal Housing Fi-  
15                  nance Agency may consult with each Fed-  
16                  eral home loan bank about the knowledge,  
17                  skills, and expertise needed to assist the  
18                  board in better fulfilling its responsibilities.

19                  “(D) CONFLICTS OF INTEREST.—Notwith-  
20                  standing subsection (f)(2), an independent di-  
21                  rector under this paragraph of a Bank may not,  
22                  during such director’s term of office, serve as  
23                  an officer of any Federal Home Loan Bank or  
24                  as a director or officer of any member of a  
25                  Bank.

1           “(E) COMMUNITY DEMOGRAPHICS.—In ap-  
2           pointing independent directors of a Bank pur-  
3           suant to this paragraph, the Director shall take  
4           into consideration the demographic makeup of  
5           the community most served by the Affordable  
6           Housing Program of the Bank pursuant to sec-  
7           tion 10(j).”;

8           (2) in the first sentence of subsection (b), by  
9           striking “elective directorship” and inserting “mem-  
10          ber directorship established pursuant to subsection  
11          (a)(2)”;

12          (3) in subsection (c)—

13                (A) by striking “elective” each place such  
14                term appears and inserting “member”, ex-  
15                cept—

16                   (i) in the second sentence, the second  
17                   place such term appears; and

18                   (ii) each place such term appears in  
19                   the fifth sentence;

20                (B) in the first sentence, by inserting after  
21                “less than one” the following: “or two, as deter-  
22                mined by the board of directors of the appro-  
23                priate Federal home loan bank,”; and

24                (C) in the second sentence—

(i) by inserting “(A) except as provided in clause (B) of this sentence,” before “if at any time”; and

(ii) by inserting before the period at the end the following: “, and (B) clause (A) of this sentence shall not apply to the directorships of any Federal home loan bank resulting from the merger of any two or more such banks”; and

(4) by striking “elective” each place such term appears (except in subsections (c), (e), and (f)).

(b) TERMS.—

(1) IN GENERAL.—Section 7(d) of the Federal Home Loan Bank Act (12 U.S.C. 1427(d)) is amended—

(A) in the first sentence, by striking “3 years” and inserting “4 years”; and

(B) in the second sentence—

(i) by striking “Federal Home Loan Bank System Modernization Act of 1999” and inserting “Federal Housing Finance Reform Act of 2007”; and

(ii) by striking “1/3” and inserting “1/4”.

1           (2) SAVINGS PROVISION.—The amendments  
2       made by paragraph (1) shall not apply to the term  
3       of office of any director of a Federal home loan bank  
4       who is serving as of the effective date of this title  
5       under section 211, including any director elected to  
6       fill a vacancy in any such office.

7       (c) CONTINUED SERVICE OF INDEPENDENT DIREC-  
8       TORS AFTER EXPIRATION OF TERM.—Section 7(f)(2) of  
9       the Federal Home Loan Bank Act (12 U.S.C. 1427(f)(2))  
10      is amended—

11           (1) in the second sentence, by striking “or the  
12       term of such office expires, whichever occurs first”;

13           (2) by adding at the end the following new sen-  
14       tence: “An independent Bank director may continue  
15       to serve as a director after the expiration of the  
16       term of such director until a successor is ap-  
17       pointed.”;

18           (3) in the paragraph heading, by striking “AP-  
19       POINTED” and inserting “INDEPENDENT”; and

20           (4) by striking “appointive” each place such  
21       term appears and inserting “independent”.

22       (d) CONFORMING AMENDMENTS.—Section 7(f)(3) of  
23       the Federal Home Loan Bank Act (12 U.S.C. 1427(f)(3))  
24      is amended—

1           (1) in the paragraph heading, by striking  
2       “ELECTED” and inserting “MEMBER”; and

3           (2) by striking “elective” each place such term  
4       appears in the first and third sentences and insert-  
5       ing “member”.

6       (e) COMPENSATION.—Subsection (i) of section 7 of  
7       the Federal Home Loan Bank Act (12 U.S.C. 1427(i))  
8       is amended to read as follows:

9       “(i) DIRECTORS’ COMPENSATION.—

10           “(1) IN GENERAL.—Each Federal home loan  
11       bank may pay the directors on the board of directors  
12       for the bank reasonable and appropriate compensa-  
13       tion for the time required of such directors, and rea-  
14       sonable and appropriate expenses incurred by such  
15       directors, in connection with service on the board of  
16       directors, in accordance with resolutions adopted by  
17       the board of directors and subject to the approval of  
18       the Director.

19           “(2) ANNUAL REPORT BY THE BOARD.—The  
20       Director shall include, in the annual report sub-  
21       mitted to the Congress pursuant to section 1319B of  
22       the Federal Housing Enterprises Financial Safety  
23       and Soundness Act of 1992, information regarding  
24       the compensation and expenses paid by the Federal



1 home loan banks to the directors on the boards of  
2 directors of the banks.”.

3 (f) **TRANSITION RULE.**—Any member of the board  
4 of directors of a Federal Home Loan Bank serving as of  
5 the effective date under section 211 may continue to serve  
6 as a member of such board of directors for the remainder  
7 of the term of such office as provided in section 7 of the  
8 Federal Home Loan Bank Act, as in effect before such  
9 effective date.

10 **SEC. 203. FEDERAL HOUSING FINANCE AGENCY OVER-**  
11 **SIGHT OF FEDERAL HOME LOAN BANKS.**

12 The Federal Home Loan Bank Act (12 U.S.C. 1421  
13 et seq.), other than in provisions of that Act added or  
14 amended otherwise by this Act, is amended—

15 (1) by striking sections 2A and 2B (12 U.S.C.  
16 1422a, 1422b);

17 (2) in section 6 (12 U.S.C. 1426(b)(1))—

18 (A) in subsection (b)(1), in the matter pre-  
19 ceding subparagraph (A), by striking “Finance  
20 Board approval” and inserting “approval by the  
21 Director”; and

22 (B) in each of subsections (c)(4)(B) and  
23 (d)(2), by striking “Finance Board regulations”  
24 each place that term appears and inserting  
25 “regulations of the Director”;

1           (3) in section 8 (12 U.S.C. 1428), in the sec-  
2           tion heading, by striking “BY THE BOARD”;

3           (4) in section 10(b) (12 U.S.C. 1430(b)), by  
4           striking “by formal resolution”;

5           (5) in section 10 (12 U.S.C. 1430), by adding  
6           at the end the following new subsection:

7           “(k) MONITORING AND ENFORCING COMPLIANCE  
8 WITH AFFORDABLE HOUSING AND COMMUNITY INVEST-  
9 MENT PROGRAM REQUIREMENTS.—The requirements  
10 under subsection (i) and (j) that the Banks establish Com-  
11 munity Investment and Affordable Housing Programs, re-  
12 spectively, and contribute to the Affordable Housing Pro-  
13 gram, shall be enforceable by the Director with respect  
14 to the Banks in the same manner and to the same extent  
15 as the housing goals under subpart B of part 2 of subtitle  
16 A of title XIII of the Housing and Community Develop-  
17 ment Act of 1992 (12 U.S.C. 4561 et seq.) are enforceable  
18 under section 1336 of such Act with respect to the Federal  
19 National Mortgage Association and the Federal Home  
20 Loan Mortgage Corporation.”;

21           (6) in section 11 (12 U.S.C. 1431)—

22                   (A) in subsection (b)—

23                           (i) in the first sentence—

1 (I) by striking “The Board” and  
2 inserting “The Office of Finance, as  
3 agent for the Banks,”; and

4 (II) by striking “the Board” and  
5 inserting “such Office”; and

6 (ii) in the second and fourth sen-  
7 tences, by striking “the Board” each place  
8 such term appears and inserting “the Of-  
9 fice of Finance”;

10 (B) in subsection (c)—

11 (i) by striking “the Board” the first  
12 place such term appears and inserting “the  
13 Office of Finance, as agent for the  
14 Banks,”; and

15 (ii) by striking “the Board” the sec-  
16 ond place such term appears and inserting  
17 “such Office”; and

18 (C) in subsection (f)—

19 (i) by striking the two commas after  
20 “permit” and inserting “or”; and

21 (ii) by striking the comma after “re-  
22 quire”;

23 (7) in section 15 (12 U.S.C. 1435), by inserting  
24 “or the Director” after “the Board”;

1           (8) in section 18 (12 U.S.C. 1438), by striking  
2       subsection (b);

3           (9) in section 21 (12 U.S.C. 1441)—

4           (A) in subsection (b)—

5               (i) in paragraph (5), by striking  
6           “Chairperson of the Federal Housing Fi-  
7           nance Board” and inserting “Director”;  
8           and

9               (ii) in the heading for paragraph (8),  
10          by striking “FEDERAL HOUSING FINANCE  
11          BOARD” and inserting “DIRECTOR”; and

12          (B) in subsection (i), in the heading for  
13          paragraph (2), by striking “FEDERAL HOUSING  
14          FINANCE BOARD” and inserting “DIRECTOR”;

15          (10) in section 23 (12 U.S.C. 1443), by striking  
16          “Board of Directors of the Federal Housing Finance  
17          Board” and inserting “Director”;

18          (11) by striking “the Board” each place such  
19          term appears in such Act (except in section 15 (12  
20          U.S.C. 1435), section 21(f)(2) (12 U.S.C.  
21          1441(f)(2)), subsections (a), (k)(2)(B)(i), and  
22          (n)(6)(C)(ii) of section 21A (12 U.S.C. 1441a), sub-  
23          sections (f)(2)(C), and (k)(7)(B)(ii) of section 21B  
24          (12 U.S.C. 1441b), and the first two places such

1 term appears in section 22 (12 U.S.C. 1442)) and  
2 inserting “the Director”;

3 (12) by striking “The Board” each place such  
4 term appears in such Act (except in sections 7(e)  
5 (12 U.S.C. 1427(e)), and 11(b) (12 U.S.C. 1431(b))  
6 and inserting “The Director”;

7 (13) by striking “the Board’s” each place such  
8 term appears in such Act and inserting “the Direc-  
9 tor’s”;

10 (14) by striking “The Board’s” each place such  
11 term appears in such Act and inserting “The Direc-  
12 tor’s”;

13 (15) by striking “the Finance Board” each  
14 place such term appears in such Act and inserting  
15 “the Director”;

16 (16) by striking “Federal Housing Finance  
17 Board” each place such term appears and inserting  
18 “Director”;

19 (17) in section 11(i) (12 U.S.C. 1431(i), by  
20 striking “the Chairperson of”; and

21 (18) in section 21(e)(9) (12 U.S.C. 1441(e)(9)),  
22 by striking “Chairperson of the”.

1 **SEC. 204. JOINT ACTIVITIES OF BANKS.**

2 Section 11 of the Federal Home Loan Bank Act (12  
3 U.S.C. 1431) is amended by adding at the end the fol-  
4 lowing new subsection:

5 “(l) **JOINT ACTIVITIES.**—Subject to the regulation of  
6 the Director, any two or more Federal Home Loan Banks  
7 may establish a joint office for the purpose of performing  
8 functions for, or providing services to, the Banks on a  
9 common or collective basis, or may require that the Office  
10 of Finance perform such functions or services, but only  
11 if the Banks are otherwise authorized to perform such  
12 functions or services individually.”.

13 **SEC. 205. SHARING OF INFORMATION BETWEEN FEDERAL**  
14 **HOME LOAN BANKS.**

15 (a) **IN GENERAL.**—The Federal Home Loan Bank  
16 Act is amended by inserting after section 20 (12 U.S.C.  
17 1440) the following new section:

18 **“SEC. 20A. SHARING OF INFORMATION BETWEEN FEDERAL**  
19 **HOME LOAN BANKS.**

20 “(a) **REGULATORY AUTHORITY.**—The Director shall  
21 prescribe such regulations as may be necessary to ensure  
22 that each Federal Home Loan Bank has access to infor-  
23 mation that the Bank needs to determine the nature and  
24 extent of its joint and several liability.

25 “(b) **NO WAIVER OF PRIVILEGE.**—The Director shall  
26 not be deemed to have waived any privilege applicable to

1 any information concerning a Federal Home Loan Bank  
2 by transferring, or permitting the transfer of, that infor-  
3 mation to any other Federal Home Loan Bank for the  
4 purpose of enabling the recipient to evaluate the nature  
5 and extent of its joint and several liability.”.

6 (b) REGULATIONS.—The regulations required under  
7 the amendment made by subsection (a) shall be issued in  
8 final form not later than 6 months after the effective date  
9 under section 211 of this Act.

10 **SEC. 206. REORGANIZATION OF BANKS AND VOLUNTARY**  
11 **MERGER.**

12 Section 26 of the Federal Home Loan Bank Act (12  
13 U.S.C. 1446) is amended—

14 (1) by inserting “(a) REORGANIZATION.—” be-  
15 fore “Whenever”; and

16 (2) by striking “liquidated or” each place such  
17 phrase appears;

18 (3) by striking “liquidation or”; and

19 (4) by adding at the end the following new sub-  
20 section:

21 “(b) VOLUNTARY MERGERS.—Any two or more  
22 Banks may, with the approval of the Director, and the  
23 approval of the boards of directors of the Banks involved,  
24 merge. The Director shall promulgate regulations estab-  
25 lishing the conditions and procedures for the consideration

1 and approval of any such voluntary merger, including the  
2 procedures for Bank member approval.”.

3 **SEC. 207. SECURITIES AND EXCHANGE COMMISSION DIS-**  
4 **CLOSURE.**

5 (a) IN GENERAL.—The Federal Home Loan Banks  
6 shall be exempt from compliance with—

7 (1) sections 13(e), 14(a), 14(c), and 17A of the  
8 Securities Exchange Act of 1934 and related Com-  
9 mission regulations; and

10 (2) section 15 of that Act and related Securities  
11 and Exchange Commission regulations with respect  
12 to transactions in capital stock of the Banks.

13 (b) MEMBER EXEMPTION.—The members of the  
14 Federal Home Loan Banks shall be exempt from compli-  
15 ance with sections 13(d), 13(f), 13(g), 14(d), and 16 of  
16 the Securities Exchange Act of 1934 and related Securi-  
17 ties and Exchange Commission regulations with respect  
18 to their ownership of, or transactions in, capital stock of  
19 the Federal Home Loan Banks.

20 (c) EXEMPTED AND GOVERNMENT SECURITIES.—

21 (1) CAPITAL STOCK.—The capital stock issued  
22 by each of the Federal Home Loan Banks under  
23 section 6 of the Federal Home Loan Bank Act are—



1 (A) exempted securities within the mean-  
2 ing of section 3(a)(2) of the Securities Act of  
3 1933; and

4 (B) “exempted securities” within the  
5 meaning of section 3(a)(12)(A) of the Securities  
6 Exchange Act of 1934.

7 (2) OTHER OBLIGATIONS.—The debentures,  
8 bonds, and other obligations issued under section 11  
9 of the Federal Home Loan Bank Act are—

10 (A) exempted securities within the mean-  
11 ing of section 3(a)(2) of the Securities Act of  
12 1933;

13 (B) “government securities” within the  
14 meaning of section 3(a)(42) of the Securities  
15 Exchange Act of 1934;

16 (C) excluded from the definition of “gov-  
17 ernment securities broker” within section  
18 3(a)(43) of the Securities Exchange Act of  
19 1934;

20 (D) excluded from the definition of “gov-  
21 ernment securities dealer” within section  
22 3(a)(44) of the Securities Exchange Act of  
23 1934; and

1                   (E) “government securities” within the  
2                   meaning of section 2(a)(16) of the Investment  
3                   Company Act of 1940.

4           (d) EXEMPTION FROM REPORTING REQUIRE-  
5 MENTS.—The Federal Home Loan Banks shall be exempt  
6 from periodic reporting requirements pertaining to—

7                   (1) the disclosure of related party transactions  
8                   that occur in the ordinary course of business of the  
9                   Banks with their members; and

10                   (2) the disclosure of unregistered sales of equity  
11                   securities.

12           (e) TENDER OFFERS.—The Securities and Exchange  
13 Commission’s rules relating to tender offers shall not  
14 apply in connection with transactions in capital stock of  
15 the Federal Home Loan Banks.

16           (f) REGULATIONS.—In issuing any final regulations  
17 to implement provisions of this section, the Securities and  
18 Exchange Commission shall consider the distinctive char-  
19 acteristics of the Federal Home Loan Banks when evalu-  
20 ating the accounting treatment with respect to the pay-  
21 ment to Resolution Funding Corporation, the role of the  
22 combined financial statements of the twelve Banks, the ac-  
23 counting classification of redeemable capital stock, and the  
24 accounting treatment related to the joint and several na-  
25 ture of the obligations of the Banks.

1 **SEC. 208. COMMUNITY FINANCIAL INSTITUTION MEMBERS.**

2 (a) TOTAL ASSET REQUIREMENT.—Paragraph (10)  
3 of section 2 of the Federal Home Loan Bank Act (12  
4 U.S.C. 1422(10)), as so redesignated by section 201(3)  
5 of this Act, is amended by striking “\$500,000,000” each  
6 place such term appears and inserting “\$1,000,000,000”.

7 (b) USE OF ADVANCES FOR COMMUNITY DEVELOP-  
8 MENT ACTIVITIES.—Section 10(a) of the Federal Home  
9 Loan Bank Act (12 U.S.C. 1430(a)) is amended—

10 (1) in paragraph (2)(B)—

11 (A) by striking “and”; and

12 (B) by inserting “, and community devel-  
13 opment activities” before the period at the end;

14 (2) in paragraph (3)(E), by inserting “or com-  
15 munity development activities” after “agriculture,”;

16 and

17 (3) in paragraph (6)—

18 (A) by striking “and”; and

19 (B) by inserting “, and ‘community devel-  
20 opment activities’ ” before “shall”.

21 **SEC. 209. TECHNICAL AND CONFORMING AMENDMENTS.**

22 (a) RIGHT TO FINANCIAL PRIVACY ACT OF 1978.—  
23 Section 1113(o) of the Right to Financial Privacy Act of  
24 1978 (12 U.S.C. 3413(o)) is amended—

1           (1) by striking “Federal Housing Finance  
2       Board” and inserting “Federal Housing Finance  
3       Agency”; and

4           (2) by striking “Federal Housing Finance  
5       Board’s” and inserting “Federal Housing Finance  
6       Agency’s”.

7       (b) RIEGLE COMMUNITY DEVELOPMENT AND REGU-  
8       LATORY IMPROVEMENT ACT OF 1994.—Section 117(e) of  
9       the Riegle Community Development and Regulatory Im-  
10      provement Act of 1994 (12 U.S.C. 4716(e)) is amended  
11      by striking “Federal Housing Finance Board” and insert-  
12      ing “Federal Housing Finance Agency”.

13      (c) TITLE 18, UNITED STATES CODE.—Title 18,  
14      United States Code, is amended by striking “Federal  
15      Housing Finance Board” each place such term appears  
16      in each of sections 212, 657, 1006, 1014, and inserting  
17      “Federal Housing Finance Agency”.

18      (d) MARA ACT OF 1997.—Section 517(b)(4) of the  
19      Multifamily Assisted Housing Reform and Affordability  
20      Act of 1997 (42 U.S.C. 1437f note) is amended by strik-  
21      ing “Federal Housing Finance Board” and inserting  
22      “Federal Housing Finance Agency”.

23      (e) TITLE 44, UNITED STATES CODE.—Section  
24      3502(5) of title 44, United States Code, is amended by

1 striking “Federal Housing Finance Board” and inserting  
2 “Federal Housing Finance Agency”.

3 (f) ACCESS TO LOCAL TV ACT OF 2000.—Section  
4 1004(d)(2)(D)(iii) of the Launching Our Communities’  
5 Access to Local Television Act of 2000 (47 U.S.C.  
6 1103(d)(2)(D)(iii)) is amended by striking “Office of Fed-  
7 eral Housing Enterprise Oversight, the Federal Housing  
8 Finance Board” and inserting “Federal Housing Finance  
9 Agency”.

10 (g) SARBANES-OXLEY ACT OF 2002.—Section  
11 105(b)(5)(B)(ii)(II) of the Sarbanes-Oxley Act of 2002  
12 (15 U.S.C. 7215(B)(5)(b)(ii)(II)) is amended by inserting  
13 “and the Director of the Federal Housing Finance Agen-  
14 cy” after “Commission,”.

15 **SEC. 210. STUDY OF AFFORDABLE HOUSING PROGRAM USE**  
16 **FOR LONG-TERM CARE FACILITIES.**

17 The Comptroller General shall conduct a study of the  
18 use of affordable housing programs of the Federal home  
19 loan banks under section 10(j) of the Federal Home Loan  
20 Bank Act to determine how and the extent to which such  
21 programs are used to assist long-term care facilities for  
22 low- and moderate-income individuals, and the effective-  
23 ness and adequacy of such assistance in meeting the needs  
24 of affected communities. The study shall examine the ap-  
25 plicability of such use to the affordable housing programs

1 required to be established by the enterprises pursuant to  
2 the amendment made by section 139 of this Act. The  
3 Comptroller General shall submit a report to the Director  
4 of the Federal Housing Finance Agency and the Congress  
5 regarding the results of the study not later than the expi-  
6 ration of the 1-year period beginning on the date of the  
7 enactment of this Act. This section shall take effect on  
8 the date of the enactment of this Act.

9 **SEC. 211. EFFECTIVE DATE.**

10       Except as specifically provided otherwise in this title,  
11 this title shall take effect on and the amendments made  
12 by this title shall take effect on, and shall apply beginning  
13 on, the expiration of the 6-month period beginning on the  
14 date of the enactment of this Act.

1 **TITLE III—TRANSFER OF FUNC-**  
2 **TIONS, PERSONNEL, AND**  
3 **PROPERTY OF OFFICE OF**  
4 **FEDERAL HOUSING ENTER-**  
5 **PRISE OVERSIGHT, FEDERAL**  
6 **HOUSING FINANCE BOARD,**  
7 **AND DEPARTMENT OF HOUS-**  
8 **ING AND URBAN DEVELOP-**  
9 **MENT**

10 **Subtitle A—Office of Federal**  
11 **Housing Enterprise Oversight**

12 **SEC. 301. ABOLISHMENT OF OFHEO.**

13 (a) IN GENERAL.—Effective at the end of the 6-  
14 month period beginning on the date of the enactment of  
15 this Act, the Office of Federal Housing Enterprise Over-  
16 sight of the Department of Housing and Urban Develop-  
17 ment and the positions of the Director and Deputy Direc-  
18 tor of such Office are abolished.

19 (b) DISPOSITION OF AFFAIRS.—During the 6-month  
20 period beginning on the date of the enactment of this Act,  
21 the Director of the Office of Federal Housing Enterprise  
22 Oversight shall, for the purpose of winding up the affairs  
23 of the Office of Federal Housing Enterprise Oversight and  
24 in addition to carrying out its other responsibilities under  
25 law—

1           (1) manage the employees of such Office and  
2           provide for the payment of the compensation and  
3           benefits of any such employee which accrue before  
4           the effective date of the transfer of such employee  
5           pursuant to section 303; and

6           (2) may take any other action necessary for the  
7           purpose of winding up the affairs of the Office.

8           (c) STATUS OF EMPLOYEES BEFORE TRANSFER.—

9           The amendments made by title I and the abolishment of  
10          the Office of Federal Housing Enterprise Oversight under  
11          subsection (a) of this section may not be construed to af-  
12          fect the status of any employee of such Office as employ-  
13          ees of an agency of the United States for purposes of any  
14          other provision of law before the effective date of the  
15          transfer of any such employee pursuant to section 303.

16          (d) USE OF PROPERTY AND SERVICES.—

17                 (1) PROPERTY.—The Director of the Federal  
18          Housing Finance Agency may use the property of  
19          the Office of Federal Housing Enterprise Oversight  
20          to perform functions which have been transferred to  
21          the Director of the Federal Housing Finance Agency  
22          for such time as is reasonable to facilitate the or-  
23          derly transfer of functions transferred pursuant to  
24          any other provision of this Act or any amendment  
25          made by this Act to any other provision of law.



1           (2) AGENCY SERVICES.—Any agency, depart-  
2           ment, or other instrumentality of the United States,  
3           and any successor to any such agency, department,  
4           or instrumentality, which was providing supporting  
5           services to the Office of Federal Housing Enterprise  
6           Oversight before the expiration of the period under  
7           subsection (a) in connection with functions that are  
8           transferred to the Director of the Federal Housing  
9           Finance Agency shall—

10                 (A) continue to provide such services, on a  
11                 reimbursable basis, until the transfer of such  
12                 functions is complete; and

13                 (B) consult with any such agency to co-  
14                 ordinate and facilitate a prompt and reasonable  
15                 transition.

16           (e) SAVINGS PROVISIONS.—

17                 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-  
18                 TIONS NOT AFFECTED.—Subsection (a) shall not af-  
19                 fect the validity of any right, duty, or obligation of  
20                 the United States, the Director of the Office of Fed-  
21                 eral Housing Enterprise Oversight, or any other per-  
22                 son, which—

23                 (A) arises under or pursuant to the title  
24                 XIII of the Housing and Community Develop-  
25                 ment Act of 1992, the Federal National Mort-

1           gage Association Charter Act, the Federal  
2           Home Loan Mortgage Corporation Act, or any  
3           other provision of law applicable with respect to  
4           such Office; and

5                 (B) existed on the day before the abolish-  
6           ment under subsection (a) of this section.

7           (2) CONTINUATION OF SUITS.—No action or  
8           other proceeding commenced by or against the Di-  
9           rector of the Office of Federal Housing Enterprise  
10          Oversight in connection with functions that are  
11          transferred to the Director of the Federal Housing  
12          Finance Agency shall abate by reason of the enact-  
13          ment of this Act, except that the Director of the  
14          Federal Housing Finance Agency shall be sub-  
15          stituted for the Director of the Office of Federal  
16          Housing Enterprise Oversight as a party to any  
17          such action or proceeding.

18 **SEC. 302. CONTINUATION AND COORDINATION OF CERTAIN**  
19 **REGULATIONS.**

20          All regulations, orders, determinations, and resolu-  
21          tions that—

22                 (1) were issued, made, prescribed, or allowed to  
23          become effective by—

24                 (A) the Office of Federal Housing Enter-  
25          prise Oversight; or

1 (B) a court of competent jurisdiction and  
2 that relate to functions transferred by this sub-  
3 title; and

4 (2) are in effect on the date of the abolishment  
5 under section 301(a) of this Act, shall remain in ef-  
6 fect according to the terms of such regulations, or-  
7 ders, determinations, and resolutions, and shall be  
8 enforceable by or against the Director of the Federal  
9 Housing Finance Agency until modified, terminated,  
10 set aside, or superseded in accordance with applica-  
11 ble law by such Director, as the case may be, any  
12 court of competent jurisdiction, or operation of law.

13 **SEC. 303. TRANSFER AND RIGHTS OF EMPLOYEES OF**  
14 **OFHEO.**

15 (a) TRANSFER.—Each employee of the Office of Fed-  
16 eral Housing Enterprise Oversight shall be transferred to  
17 the Federal Housing Finance Agency for employment no  
18 later than the date of the abolishment under section  
19 301(a) of this Act and such transfer shall be deemed a  
20 transfer of function for purposes of section 3503 of title  
21 5, United States Code.

22 (b) GUARANTEED POSITIONS.—Each employee trans-  
23 ferred under subsection (a) shall be guaranteed a position  
24 with the same status, tenure, grade, and pay as that held  
25 on the day immediately preceding the transfer. Each such

1 employee holding a permanent position shall not be invol-  
2 untarily separated or reduced in grade or compensation  
3 for 12 months after the date of transfer, except for cause  
4 or, if the employee is a temporary employee, separated in  
5 accordance with the terms of the appointment.

6 (c) APPOINTMENT AUTHORITY FOR EXCEPTED  
7 SERVICE EMPLOYEES.—

8 (1) IN GENERAL.—In the case of employees oc-  
9 cupying positions in the excepted service, any ap-  
10 pointment authority established pursuant to law or  
11 regulations of the Office of Personnel Management  
12 for filling such positions shall be transferred, subject  
13 to paragraph (2).

14 (2) DECLINE OF TRANSFER.—The Director of  
15 the Federal Housing Finance Agency may decline a  
16 transfer of authority under paragraph (1) (and the  
17 employees appointed pursuant thereto) to the extent  
18 that such authority relates to positions excepted  
19 from the competitive service because of their con-  
20 fidential, policy-making, policy-determining, or pol-  
21 icy-advocating character.

22 (d) REORGANIZATION.—If the Director of the Fed-  
23 eral Housing Finance Agency determines, after the end  
24 of the 1-year period beginning on the date of the abolish-  
25 ment under section 301(a), that a reorganization of the

1 combined work force is required, that reorganization shall  
2 be deemed a major reorganization for purposes of afford-  
3 ing affected employees retirement under section  
4 8336(d)(2) or 8414(b)(1)(B) of title 5, United States  
5 Code.

6 (e) EMPLOYEE BENEFIT PROGRAMS.—Any employee  
7 of the Office of Federal Housing Enterprise Oversight ac-  
8 cepting employment with the Director of the Federal  
9 Housing Finance Agency as a result of a transfer under  
10 subsection (a) may retain for 12 months after the date  
11 such transfer occurs membership in any employee benefit  
12 program of the Federal Housing Finance Agency or the  
13 Office of Federal Housing Enterprise Oversight, as appli-  
14 cable, including insurance, to which such employee belongs  
15 on the date of the abolishment under section 301(a) if—

16 (1) the employee does not elect to give up the  
17 benefit or membership in the program; and

18 (2) the benefit or program is continued by the  
19 Director of the Federal Housing Finance Agency,

20 The difference in the costs between the benefits which  
21 would have been provided by such agency and those pro-  
22 vided by this section shall be paid by the Director of the  
23 Federal Housing Finance Agency. If any employee elects  
24 to give up membership in a health insurance program or  
25 the health insurance program is not continued by such Di-

1 rector, the employee shall be permitted to select an alter-  
 2 nate Federal health insurance program within 30 days of  
 3 such election or notice, without regard to any other regu-  
 4 larly scheduled open season.

5 **SEC. 304. TRANSFER OF PROPERTY AND FACILITIES.**

6       Upon the abolishment under section 301(a), all prop-  
 7 erty of the Office of Federal Housing Enterprise Oversight  
 8 shall transfer to the Director of the Federal Housing Fi-  
 9 nance Agency.

10       **Subtitle B—Federal Housing**  
 11       **Finance Board**

12 **SEC. 321. ABOLISHMENT OF THE FEDERAL HOUSING FI-**  
 13 **NANCE BOARD.**

14       (a) IN GENERAL.—Effective at the end of the 6-  
 15 month period beginning on the date of enactment of this  
 16 Act, the Federal Housing Finance Board (in this title re-  
 17 ferred to as the “Board”) is abolished.

18       (b) DISPOSITION OF AFFAIRS.—During the 6-month  
 19 period beginning on the date of enactment of this Act, the  
 20 Board, for the purpose of winding up the affairs of the  
 21 Board and in addition to carrying out its other responsibil-  
 22 ities under law—

23               (1) shall manage the employees of such Board  
 24       and provide for the payment of the compensation  
 25       and benefits of any such employee which accrue be-

1       fore the effective date of the transfer of such em-  
2       ployee under section 323; and

3           (2) may take any other action necessary for the  
4       purpose of winding up the affairs of the Board.

5       (c) STATUS OF EMPLOYEES BEFORE TRANSFER.—

6       The amendments made by titles I and II and the abolish-  
7       ment of the Board under subsection (a) may not be con-  
8       strued to affect the status of any employee of such Board  
9       as employees of an agency of the United States for pur-  
10      poses of any other provision of law before the effective  
11      date of the transfer of any such employee under section  
12      323.

13      (d) USE OF PROPERTY AND SERVICES.—

14           (1) PROPERTY.—The Director of the Federal  
15      Housing Finance Agency may use the property of  
16      the Board to perform functions which have been  
17      transferred to the Director of the Federal Housing  
18      Finance Agency for such time as is reasonable to fa-  
19      cilitate the orderly transfer of functions transferred  
20      under any other provision of this Act or any amend-  
21      ment made by this Act to any other provision of law.

22           (2) AGENCY SERVICES.—Any agency, depart-  
23      ment, or other instrumentality of the United States,  
24      and any successor to any such agency, department,  
25      or instrumentality, which was providing supporting

1 services to the Board before the expiration of the pe-  
2 riod under subsection (a) in connection with func-  
3 tions that are transferred to the Director of the  
4 Federal Housing Finance Agency shall—

5 (A) continue to provide such services, on a  
6 reimbursable basis, until the transfer of such  
7 functions is complete; and

8 (B) consult with any such agency to co-  
9 ordinate and facilitate a prompt and reasonable  
10 transition.

11 (e) SAVINGS PROVISIONS.—

12 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-  
13 TIONS NOT AFFECTED.—Subsection (a) shall not af-  
14 fect the validity of any right, duty, or obligation of  
15 the United States, a member of the Board, or any  
16 other person, which—

17 (A) arises under the Federal Home Loan  
18 Bank Act or any other provision of law applica-  
19 ble with respect to such Board; and

20 (B) existed on the day before the effective  
21 date of the abolishment under subsection (a).

22 (2) CONTINUATION OF SUITS.—No action or  
23 other proceeding commenced by or against the  
24 Board in connection with functions that are trans-  
25 ferred to the Director of the Federal Housing Fi-



1        nance Agency shall abate by reason of the enactment  
2        of this Act, except that the Director of the Federal  
3        Housing Finance Agency shall be substituted for the  
4        Board or any member thereof as a party to any such  
5        action or proceeding.

6    **SEC. 322. CONTINUATION AND COORDINATION OF CERTAIN**  
7                    **REGULATIONS.**

8        (a) IN GENERAL.—All regulations, orders, deter-  
9        minations, and resolutions described under subsection (b)  
10       shall remain in effect according to the terms of such regu-  
11       lations, orders, determinations, and resolutions, and shall  
12       be enforceable by or against the Director of the Federal  
13       Housing Finance Agency until modified, terminated, set  
14       aside, or superseded in accordance with applicable law by  
15       such Director, any court of competent jurisdiction, or op-  
16       eration of law.

17       (b) APPLICABILITY.—A regulation, order, determina-  
18       tion, or resolution is described under this subsection if it—

19                (1) was issued, made, prescribed, or allowed to  
20       become effective by—

21                        (A) the Board; or

22                        (B) a court of competent jurisdiction and  
23       relates to functions transferred by this subtitle;  
24       and

1           (2) is in effect on the effective date of the abol-  
2           ishment under section 321(a).

3   **SEC. 323. TRANSFER AND RIGHTS OF EMPLOYEES OF THE**  
4                   **FEDERAL HOUSING FINANCE BOARD.**

5           (a) TRANSFER.—Each employee of the Board shall  
6   be transferred to the Federal Housing Finance Agency for  
7   employment not later than the effective date of the abol-  
8   ishment under section 321(a), and such transfer shall be  
9   deemed a transfer of function for purposes of section 3503  
10 of title 5, United States Code.

11          (b) GUARANTEED POSITIONS.—Each employee trans-  
12 ferred under subsection (a) shall be guaranteed a position  
13 with the same status, tenure, grade, and pay as that held  
14 on the day immediately preceding the transfer. Each such  
15 employee holding a permanent position shall not be invol-  
16 untarily separated or reduced in grade or compensation  
17 for 12 months after the date of transfer, except for cause  
18 or, if the employee is a temporary employee, separated in  
19 accordance with the terms of the appointment.

20          (c) APPOINTMENT AUTHORITY FOR EXCEPTED AND  
21 SENIOR EXECUTIVE SERVICE EMPLOYEES.—

22           (1) IN GENERAL.—In the case of employees oc-  
23 cupying positions in the excepted service or the Sen-  
24 ior Executive Service, any appointment authority es-  
25 tablished under law or by regulations of the Office

1 of Personnel Management for filling such positions  
2 shall be transferred, subject to paragraph (2).

3 (2) DECLINE OF TRANSFER.—The Director of  
4 the Federal Housing Finance Agency may decline a  
5 transfer of authority under paragraph (1) to the ex-  
6 tent that such authority relates to positions excepted  
7 from the competitive service because of their con-  
8 fidential, policymaking, policy-determining, or policy-  
9 advocating character, and noncareer positions in the  
10 Senior Executive Service (within the meaning of sec-  
11 tion 3132(a)(7) of title 5, United States Code).

12 (d) REORGANIZATION.—If the Director of the Fed-  
13 eral Housing Finance Agency determines, after the end  
14 of the 1-year period beginning on the effective date of the  
15 abolishment under section 321(a), that a reorganization  
16 of the combined workforce is required, that reorganization  
17 shall be deemed a major reorganization for purposes of  
18 affording affected employees retirement under section  
19 8336(d)(2) or 8414(b)(1)(B) of title 5, United States  
20 Code.

21 (e) EMPLOYEE BENEFIT PROGRAMS.—

22 (1) IN GENERAL.—Any employee of the Board  
23 accepting employment with the Federal Housing Fi-  
24 nance Agency as a result of a transfer under sub-  
25 section (a) may retain for 12 months after the date

1 on which such transfer occurs membership in any  
2 employee benefit program of the Federal Housing  
3 Finance Agency or the Board, as applicable, includ-  
4 ing insurance, to which such employee belongs on  
5 the effective date of the abolishment under section  
6 321(a) if—

7 (A) the employee does not elect to give up  
8 the benefit or membership in the program; and

9 (B) the benefit or program is continued by  
10 the Director of the Federal Housing Finance  
11 Agency.

12 (2) COST DIFFERENTIAL.—The difference in  
13 the costs between the benefits which would have  
14 been provided by the Board and those provided by  
15 this section shall be paid by the Director of the Fed-  
16 eral Housing Finance Agency. If any employee elects  
17 to give up membership in a health insurance pro-  
18 gram or the health insurance program is not contin-  
19 ued by such Director, the employee shall be per-  
20 mitted to select an alternate Federal health insur-  
21 ance program within 30 days after such election or  
22 notice, without regard to any other regularly sched-  
23 uled open season.

1 **SEC. 324. TRANSFER OF PROPERTY AND FACILITIES.**

2       Upon the effective date of the abolishment under sec-  
3 tion 321(a), all property of the Board shall transfer to  
4 the Director of the Federal Housing Finance Agency.

5 **Subtitle C—Department of Housing**  
6 **and Urban Development**

7 **SEC. 341. TERMINATION OF ENTERPRISE-RELATED FUNC-**  
8 **TIONS.**

9       (a) **TERMINATION DATE.**—For purposes of this sub-  
10 title, the term “termination date” means the date that oc-  
11 curs 6 months after the date of the enactment of this Act.

12       (b) **DETERMINATION OF TRANSFERRED FUNCTIONS**  
13 **AND EMPLOYEES.**—

14               (1) **IN GENERAL.**—Not later than the expira-  
15 tion of the 3-month period beginning on the date of  
16 the enactment of this Act, the Secretary, in con-  
17 sultation with the Director of the Office of Federal  
18 Housing Enterprise Oversight, shall determine—

19                       (A) the functions, duties, and activities of  
20 the Secretary of Housing and Urban Develop-  
21 ment regarding oversight or regulation of the  
22 enterprises under or pursuant to the author-  
23 izing statutes, title XIII of the Housing and  
24 Community Development Act of 1992, and any  
25 other provisions of law, as in effect before the  
26 date of the enactment of this Act, but not in-

cluding any such functions, duties, and activities of the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development and such Office; and

(B) the employees of the Department of Housing and Urban Development necessary to perform such functions, duties, and activities.

(2) ENTERPRISE-RELATED FUNCTIONS.—For purposes of this subtitle, the term “enterprise-related functions of the Department” means the functions, duties, and activities of the Department of Housing and Urban Development determined under paragraph (1)(A).

(3) ENTERPRISE-RELATED EMPLOYEES.—For purposes of this subtitle, the term “enterprise-related employees of the Department” means the employees of the Department of Housing and Urban Development determined under paragraph (1)(B).

(c) DISPOSITION OF AFFAIRS.—During the 6-month period beginning on the date of enactment of this Act, the Secretary of Housing and Urban Development (in this title referred to as the “Secretary”), for the purpose of winding up the affairs of the Secretary regarding the enterprise-related functions of the Department of Housing

1 and Urban Development (in this title referred to as the  
2 “Department”) and in addition to carrying out the Sec-  
3 retary’s other responsibilities under law regarding such  
4 functions—

5           (1) shall manage the enterprise-related employ-  
6 ees of the Department and provide for the payment  
7 of the compensation and benefits of any such em-  
8 ployee which accrue before the effective date of the  
9 transfer of any such employee under section 343;  
10 and

11           (2) may take any other action necessary for the  
12 purpose of winding up the enterprise-related func-  
13 tions of the Department.

14       (d) STATUS OF EMPLOYEES BEFORE TRANSFER.—  
15 The amendments made by titles I and II and the termi-  
16 nation of the enterprise-related functions of the Depart-  
17 ment under subsection (b) may not be construed to affect  
18 the status of any employee of the Department as employ-  
19 ees of an agency of the United States for purposes of any  
20 other provision of law before the effective date of the  
21 transfer of any such employee under section 343.

22       (e) USE OF PROPERTY AND SERVICES.—

23           (1) PROPERTY.—The Director of the Federal  
24 Housing Finance Agency may use the property of  
25 the Secretary to perform functions which have been

1 transferred to the Director of the Federal Housing  
2 Finance Agency for such time as is reasonable to fa-  
3 cilitate the orderly transfer of functions transferred  
4 under any other provision of this Act or any amend-  
5 ment made by this Act to any other provision of law.

6 (2) AGENCY SERVICES.—Any agency, depart-  
7 ment, or other instrumentality of the United States,  
8 and any successor to any such agency, department,  
9 or instrumentality, which was providing supporting  
10 services to the Secretary regarding enterprise-related  
11 functions of the Department before the termination  
12 date under subsection (a) in connection with such  
13 functions that are transferred to the Director of the  
14 Federal Housing Finance Agency shall—

15 (A) continue to provide such services, on a  
16 reimbursable basis, until the transfer of such  
17 functions is complete; and

18 (B) consult with any such agency to co-  
19 ordinate and facilitate a prompt and reasonable  
20 transition.

21 (f) SAVINGS PROVISIONS.—

22 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-  
23 TIONS NOT AFFECTED.—Subsection (a) shall not af-  
24 fect the validity of any right, duty, or obligation of



1 the United States, the Secretary, or any other per-  
 2 son, which—

3 (A) arises under the authorizing statutes,  
 4 title XIII of the Housing and Community De-  
 5 velopment Act of 1992, or any other provision  
 6 of law applicable with respect to the Secretary,  
 7 in connection with the enterprise-related func-  
 8 tions of the Department; and

9 (B) existed on the day before the termi-  
 10 nation date under subsection (a).

11 (2) CONTINUATION OF SUITS.—No action or  
 12 other proceeding commenced by or against the Sec-  
 13 retary in connection with the enterprise-related func-  
 14 tions of the Department shall abate by reason of the  
 15 enactment of this Act, except that the Director of  
 16 the Federal Housing Finance Agency shall be sub-  
 17 stituted for the Secretary or any member thereof as  
 18 a party to any such action or proceeding.

19 **SEC. 342. CONTINUATION AND COORDINATION OF CERTAIN**  
 20 **REGULATIONS.**

21 (a) IN GENERAL.—All regulations, orders, and deter-  
 22 minations described in subsection (b) shall remain in ef-  
 23 fect according to the terms of such regulations, orders,  
 24 determinations, and resolutions, and shall be enforceable  
 25 by or against the Director of the Federal Housing Finance

1 Agency until modified, terminated, set aside, or super-  
2 seded in accordance with applicable law by such Director,  
3 any court of competent jurisdiction, or operation of law.

4 (b) APPLICABILITY.—A regulation, order, or deter-  
5 mination is described under this subsection if it—

6 (1) was issued, made, prescribed, or allowed to  
7 become effective by—

8 (A) the Secretary; or

9 (B) a court of competent jurisdiction and  
10 that relate to the enterprise-related functions of  
11 the Department; and

12 (2) is in effect on the termination date under  
13 section 341(a).

14 **SEC. 343. TRANSFER AND RIGHTS OF EMPLOYEES OF DE-**  
15 **PARTMENT OF HOUSING AND URBAN DEVEL-**  
16 **OPMENT.**

17 (a) TRANSFER.—

18 (1) IN GENERAL.—Except as provided in para-  
19 graph (2), each enterprise-related employee of the  
20 Department shall be transferred to the Federal  
21 Housing Finance Agency for employment not later  
22 than the termination date under section 341(a) and  
23 such transfer shall be deemed a transfer of function  
24 for purposes of section 3503 of title 5, United States  
25 Code.

1           (2) AUTHORITY TO DECLINE.—An enterprise-  
2       related employee of the Department may, in the dis-  
3       cretion of the employee, decline transfer under para-  
4       graph (1) to a position in the Federal Housing Fi-  
5       nance Agency and shall be guaranteed a position in  
6       the Department with the same status, tenure, grade,  
7       and pay as that held on the day immediately pre-  
8       ceding the date that such declination was made.  
9       Each such employee holding a permanent position  
10      shall not be involuntarily separated or reduced in  
11      grade or compensation for 12 months after the date  
12      that the transfer would otherwise have occurred, ex-  
13      cept for cause or, if the employee is a temporary em-  
14      ployee, separated in accordance with the terms of  
15      the appointment.

16      (b) GUARANTEED POSITIONS.—Each enterprise-re-  
17      lated employee of the Department transferred under sub-  
18      section (a) shall be guaranteed a position with the same  
19      status, tenure, grade, and pay as that held on the day  
20      immediately preceding the transfer. Each such employee  
21      holding a permanent position shall not be involuntarily  
22      separated or reduced in grade or compensation for 12  
23      months after the date of transfer, except for cause or, if  
24      the employee is a temporary employee, separated in ac-  
25      cordance with the terms of the appointment.

1 (c) APPOINTMENT AUTHORITY FOR EXCEPTED AND  
2 SENIOR EXECUTIVE SERVICE EMPLOYEES.—

3 (1) IN GENERAL.—In the case of employees oc-  
4 cupying positions in the excepted service or the Sen-  
5 ior Executive Service, any appointment authority es-  
6 tablished under law or by regulations of the Office  
7 of Personnel Management for filling such positions  
8 shall be transferred, subject to paragraph (2).

9 (2) DECLINE OF TRANSFER.—The Director of  
10 the Federal Housing Finance Agency may decline a  
11 transfer of authority under paragraph (1) (and the  
12 employees appointed pursuant thereto) to the extent  
13 that such authority relates to positions excepted  
14 from the competitive service because of their con-  
15 fidential, policymaking, policy-determining, or policy-  
16 advocating character, and noncareer positions in the  
17 Senior Executive Service (within the meaning of sec-  
18 tion 3132(a)(7) of title 5, United States Code).

19 (d) REORGANIZATION.—If the Director of the Fed-  
20 eral Housing Finance Agency determines, after the end  
21 of the 1-year period beginning on the termination date  
22 under section 341(a), that a reorganization of the com-  
23 bined workforce is required, that reorganization shall be  
24 deemed a major reorganization for purposes of affording

1 affected employees retirement under section 8336(d)(2) or  
2 8414(b)(1)(B) of title 5, United States Code.

3 (e) EMPLOYEE BENEFIT PROGRAMS.—

4 (1) IN GENERAL.—Any enterprise-related em-  
5 ployee of the Department accepting employment  
6 with the Federal Housing Finance Agency as a re-  
7 sult of a transfer under subsection (a) may retain  
8 for 12 months after the date on which such transfer  
9 occurs membership in any employee benefit program  
10 of the Federal Housing Finance Agency or the De-  
11 partment, as applicable, including insurance, to  
12 which such employee belongs on the termination  
13 date under section 341(a) if—

14 (A) the employee does not elect to give up  
15 the benefit or membership in the program; and

16 (B) the benefit or program is continued by  
17 the Director of the Federal Housing Finance  
18 Agency.

19 (2) COST DIFFERENTIAL.—The difference in  
20 the costs between the benefits which would have  
21 been provided by the Department and those provided  
22 by this section shall be paid by the Director of the  
23 Federal Housing Finance Agency. If any employee  
24 elects to give up membership in a health insurance  
25 program or the health insurance program is not con-

1       tinued by such Director, the employee shall be per-  
2       mitted to select an alternate Federal health insur-  
3       ance program within 30 days after such election or  
4       notice, without regard to any other regularly sched-  
5       uled open season.

6   **SEC. 344. TRANSFER OF APPROPRIATIONS, PROPERTY, AND**  
7                   **FACILITIES.**

8       Upon the termination date under section 341(a), all  
9       assets, liabilities, contracts, property, records, and unex-  
10      pended balances of appropriations, authorizations, alloca-  
11      tions, and other funds employed, held, used, arising from,  
12      available to, or to be made available to the Department  
13      in connection with enterprise-related functions of the De-  
14      partment shall transfer to the Director of the Federal  
15      Housing Finance Agency. Unexpended funds transferred  
16      by this section shall be used only for the purposes for  
17      which the funds were originally authorized and appro-  
18      priated.

Passed the House of Representatives May 22, 2007.

Attest:

*Clerk.*



110<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1427

## AN ACT

To reform the regulation of certain housing-related  
Government-sponsored enterprises, and for other  
purposes.